(16,827.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 264.

THE CITY OF RICHMOND, PETITIONER,

vs.

THE SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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a *Transcript of Record.*

United States Circuit Court of Appeals, Fourth Circuit.

CITY OF RICHMOND, Appellant,
versus
SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, Appellee. } No. 241.

Appeal from the circuit court of the United States for the eastern district of Virginia, at Richmond.

Record filed September 14th, 1897.

[Stamped:] Clerk's office, U. S. circuit court of appeals, fourth circuit. H. T. Meloney, clerk, Richmond.

1 *Transcript of Record.*

In the Circuit Court of the United States in and for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, Plaintiff,
vs.
CITY OF RICHMOND, Defendant. } In Equity.

Be it remembered that heretofore, to wit, on the 6th day of October, 1896, came The Southern Bell Telephone and Telegraph Company, the plaintiff in the above-styled cause, and filed its bill of complaint against the City of Richmond, which said bill is in the words and figures following, to wit:

Bill of Complaint.

Filed October 6th, 1896.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH Co., Plaintiff,
vs.
CITY OF RICHMOND, Defendant.

To the judges of the circuit court of the United States for the eastern district of Virginia:

The Southern Bell Telephone and Telegraph Company, a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of New York, and a citizen of the State of New York, having its residence, principal office and chief place of business in the city of New York, in the State of New York, brings this its bill against the City of Richmond, a municipal corporation,

incorporated and existing under the laws of the State of Virginia,
and a citizen of the State of Virginia, having its place of resi-
2 dence, its principal office and chief place of business within
the territorial limits of Henrico county, in the State of Virginia, in the eastern district of Virginia.

And thereupon your orator complains and says, as follows:

That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of twenty thousand dollars ($20,000.00); indeed, vastly exceeds said sum or value.

That your orator, a foreign corporation, organized and existing as aforesaid, is engaged in the business of a telephone company, and of constructing, maintaining and operating telephone lines in, through and between the States of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida; that your orator has been engaged in said business for a period of about fifteen years; that during nearly the whole of said period your orator has continuously maintained at various places in said States and in the city of Richmond, Va., an exchange, poles, wires, instruments and all other apparatus and property necessary for the maintenance and operation of telephones and telephone lines, and has erected and maintained, through and along certain of the streets and alleys of the city of Richmond, a municipal corporation in the State of Virginia, numerous poles and wires for conducting its said business, which was and is the transmission of communications by electricity between different persons and points; and that your orator has so conducted its said business, and has so erected and maintained its said lines, wires and poles under and by authority of the common council and board of aldermen and authorities of the city of Richmond, the legislature of the State of Virginia and acts of Congress of the United States.

That in the conduct of its business as aforesaid, your orator maintains in the city of Richmond an office or exchange, supplies and instruments connected by wires with a large number of subscribers, and with the office of the Western Union Telegraph Company in said city, and that your orator has now in the said city of Richmond a large number of such subscribers, each and all of whom may be, and many of whom are, connected through said exchange with the office of said Western Union Telegraph Company, and may, and many of such subscribers do, transmit and receive through the instruments on their said premises, through said exchange to and from the office of the Western Union Telegraph Company, messages addressed and intended to be sent and received and which
are sent to and received from points in other States, in the
3 District of Columbia, and foreign counties; your said orator
having for years received and transmitted such messages in this manner under agreement still in force; and it also has subscribers outside of the city of Richmond, whose 'phones connect with the other 'phones of your orator in said city, by and through the means of wires and poles of your orator located on and along the streets and alleys of the said city, many of which customers have no ready and convenient access to said telegraph company

except through the use of your orator's wires and polls for the transmission and receipt of telegrams between them and points outside the State of Virginia, and use said 'phones, wires and poles of your orator in connection with said Western Union Telegraph Company, for that purpose, under and by virtue of an agreement between your orator and said Western Union Telegraph Company for the joint use of the poles and fixtures of said companies in sending and receiving such messages; and that part of such transmission from the office of your orator's subscribers to and from the office of the Western Union Telegraph Company, of messages addressed and sent by telegraph to and from points outside of the State of Virginia, to the District of Columbia and to foreign counties, is interstate commerce, and is commerce between said points outside of the city of Richmond and the city of Richmond, and other States and the District of Columbia and foreign countries and is a necessary part of the business of your orator, and that its said wires in the city of Richmond, and its poles, to which they are attached, are used for that purpose, and that, therefore, your orator's business in the city of Richmond is not confined to telephonic messages between different points in said States and in the State of Virginia, and it is the intention and purpose of your orator to continue in the future, as it has in the past, from time to time to extend its business and build its lines still more across and beyond the city of Richmond and State of Virginia into other countries and States.

Your orator further states that its wires, poles and lines used along and over the streets of said city constitute a part of the postal service of the United States.

That your orator's subscribers in said State include in their number most of the important business establishments doing business in said States, including railroads, factories, commercial houses and offices; and it also connects with a large number of private residences; that in the transaction of its business your orator is called upon to make telephonic communication and connection in
4 residences to very large number of calls, each and every day, and to place its subscribers in communication, not only with other subscribers in the city of Richmond, but with the correspondents of subscribers through its connection with the Western Union Telegraph office, in the other States of the United States, the District of Columbia and foreign countries; that in the way of such communication between its subscribers in Richmond and other correspondents in other States, the District of Columbia and foreign countries, your orator makes numerous communications each and every month through its said exchange in the city of Richmond.

Your orator further avers that its said business has become, and is an essential and necessary part of the business of its subscribers and their correspondents outside of the city of Richmond and the State of Virginia, and that any interruption therewith would cause an immediate and serious disturbance and damage to your orator and to the business interests of its subscribers.

That the business and status of your orator is that of a telegraph company, under the laws of the United States and of the State of

Virginia, and of other States of the United States, and that it was, and is in fact, chartered as a telegraph company under the general telegraph laws of New York.

Your orator further states that the establishment of its plant, lines, poles and wires in said city cost many thousand dollars in excess of $20,000, and is worth now more than it cost, and that its annual business in said city has been for years, and is now worth more than $5,000.

That your orator on or about the 13th day of February, 1889, duly filed with the Postmaster General of the United States, its acceptance of the act of Congress of the United States, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes," approved July 24th, 1886, by which it was, among other things, provided that "any telegraph company which was then organized, or might thereafter be organized, under the laws of any State, and which should file a written acceptance with the Postmaster General of the restrictions and obligations of said act, should have the right to construct, maintain and operate lines of telegraph, over and along any of the military roads and post-roads of the United States which had then or might thereafter be declared such by law." A copy of which acceptance is herewith filed, marked "Exhibit A" and prayed to be taken as part of this bill.

5 That by virtue of said acceptance of said act, your orator under the provisions thereof, became entitled to and ever since said acceptance has been and is now entitled to construct, maintain and operate lines of telephones over and along any of the military roads and post-roads of the United States, which had then been or might thereafter be declared such by law.

That the streets, alleys and highways of the city of Richmond are, and at the time herein stated were, and now are post-roads of the United States, declared so to be by the laws of the United States.

That the several departments of the Government of the United States located in the city of Richmond, have used, and at the present time do use, in said city your orator's electrical conductors, and other facilities for the transmission of instructions, orders and information to other officers and agents and to other persons in the administration of governmental affairs and on other business throughout the several States and the District of Columbia and in foreign countries.

That your orator under and by virtue of the statutes of the State of Virginia, Code, section 1287, is authorized and empowered to construct, maintain and operate its lines of poles and wires, with necessary facilities along and over the streets of any city or town in the State of Virginia with the consent of the council thereof, and under and by virtue of the power and authority therein conferred, all of which was additional to the right given your orator by the act of Congress hereinbefore referred to and now maintains and operates its lines in the streets of the city of Richmond, and has in all respects complied with the legal obligations and requirements imposed.

That relying upon its right to erect, maintain and operate its lines along and over the streets and alleys of the city of Richmond, it entered upon said streets and alleys and has conducted its business and executed its contracts, of which a large number are now in force, to furnish and afford telephonic facilities to the residents of Richmond and to persons outside of the city of Richmond, and with the officers and agents of the Federal Government.

Your orator further shows that under the act of Congress of 1866, the provisions of which it has long since accépted, as is shown by the certified copy of its acceptance herewith filed, it was and is entitled to maintain and operate its lines through and over the streets and alleys of the city of Richmond, without regard to the consent of the said city, and it did in fact locate many of its poles and
6 wires and begin the operation of its business without applying to the said city for permission so to do. The said city, however, on the 26th day of June, 1884, after your orator had begun to operate its business along and over the streets and alleys of said city, in pursuance of the power given it under section 1287 of the Code of Virginia, which provides that "telephone companies may construct, maintain and operate their lines along and over the streets of any city or town with the consent of the council thereof," passed an ordinance by which "permission was granted the Southern Bell Telephone and Telegraph Company to erect poles and run suitable wires thereon for the purpose of telephonic communication throughout the city of Richmond, on the public streets thereof, on such routes as may be specified and agreed upon by a resolution or resolutions of the committee on streets, from time to time, and upon the conditions and under the provisions of this ordinance." The 2nd and 3rd provisions of this ordinance provide for the use of the poles of the company, by the city, for its fire-alarm and police telegraph, without charge and for a special and lower rate for the use of the company's 'phones and service by the city, which advantages to the city have been enjoyed by the city constantly for years.

The fourth section provides against injury to shade trees and how the work of putting in poles, etc., is to be carried on. The fifth section provides that "the ordinance may at any time be repealed by the city of Richmond; such repeal to take effect twelve months after the ordinance or resolution repealing it becomes a law." A copy of this ordinance is herewith filed, marked "Exhibit K," and prayed to be taken as a part of this bill.

Your orator further alleges that although it had begun its operations before the passage of the ordinance aforesaid, yet after the said ordinance was approved and became an ordinance of the said city, it, in pursuance thereof and of resolutions adopted from time to time by the committee on streets and pursuant to the permission and rights so granted and obtained, and relying thereon as well as of the rights granted and conferred by the laws of the United States and of the State of Virginia hereinbefore referred to, and before the attempted repeal of the said ordinance of June 26th, 1884, erected poles and wires and constructed, maintained and operated, and still maintains and operates, telephone lines in the streets of the said

city of Richmond, and its poles and wires in the said city of Richmond are now located in accordance with the provisions of the said ordinance of 1884, as well as under the provisions of the said law of the United States and of the State of Virginia.

7 Your orator was thus firmly established in its position on the streets and alleys of the said city, and was actively engaged in the exercise of its business—carrying out faithfully its obligations imposed on it by law and its contract with said city and the public, when the said city of Richmond, through its officials, began to make requests and demands of it not only unwarranted by anything in its agreement with said city, but which were injurious to your orator's business.

Thus an ordinance was passed and approved July 18, 1891, which undertook to give the committee on streets of the city of Richmond the right to require your orator to allow "any other person or company to place upon its (your orator's) poles * * * any telegraph, telephone, electric light, electric power, electric car wires or other wires used in connection with the transmission of electricity," on terms to be agreed upon by the owner of the poles and the person or company wishing to put its wires on them; and if they could not agree, then the terms were to be settled by arbitration.

This ordinance was so clearly in conflict with the rights of your orator, and so manifestly void, that the city attorney of Richmond advised the city that it could not be enforced.

Threats were, however, made by some of those in authority in the said city that unless your orator submitted to the requirements of this ordinance that it would be driven from the city and its business broken up and ruined. Again early in the year of 1894 the said city mentioned to your orator its desire to have a certain number of 'phones furnished by your orator free of charge, and, after some negotiations about this matter had taken place, the city caused to be addressed and delivered to your orator's manager in the said city a letter, in which it was stated that the committee on grounds and buildings had directed the writer, the city engineer, to "state their requirement" that your orator should furnish thirty 'phones free of charge for the use of said city.

A copy of this letter is herewith filed and marked "Exhibit B," and prayed to be taken as a part of this bill.

After some delays and correspondence, your orator declined to acquiesce in this requirement of said city, as it had a right to do, and submitted the proposition contained in its letter of the 2nd of November, 1894, a copy of which, marked "Exhibit C," is herewith filed and prayed to be taken as a part of this bill, and to this received a reply increasing the demand of the city to thirty-nine free 'phones. This reply has been mislaid, but a copy of it,

8 marked "Exhibit D," will be filed with this bill, if it can be found. To this reply your orator replied by letter of the 5th of November, 1894, a copy of which, marked "Exhibit E," is herewith filed and prayed to be taken as a part of this bill.

Constant and continued threats were made during this correspondence of the destruction of your orator's business and of driving

it from the streets and alleys of said city if these illegal and burdensome requirements of the said city were not acquiesced in, and agreed to, and upon failure of your orator to submit — such requirements, which not only were injurious to its business, but were in conflict with its rights guaranteed it by the law of Virginia and the statutes and Constitution of the United States, the ordinance of the 14th of December, 1894, a copy of which is herewith filed, marked "Exhibit F," and prayed to be taken as a part of this bill, attempting to take from your orator its rights and franchises, was passed, which provides: "That the ordinance approved June 26th, 1884, granting the right of way throughout the city to the Southern Telephone and Telegraph Company be and the same is hereby repealed

2nd. That in accordance with the 5th section of said ordinance all privileges and rights granted by said ordinance shall cease and be determined at the expiration of twelve months from the approval of this ordinance by the mayor."

On the 10th of September, 1895, two other ordinances of said city imposing taxes and fines on your orator, as well as on other companies, for using poles and wires were passed. Copies of which marked G and H are herewith filed and prayed to be taken as a part of this bill.

Under one of these ordinances your orator was required (under penalty of ruinous and unreasonable fines) to petition for the privilege of erecting and maintain-g poles and wires, where they now are "in accordance with the conditions of this ordinance and such other conditions as the council may see fit to impose." And the very first condition to which this company would have to consent, if it made the petition, was, if the company failed to obtain permission asked for, it was to remove its poles and wires from the streets and be liable to fines amounting to thousands of dollars for not doing so.

The ordinance which required the wires to be placed under ground has been amended so as to extend the time for this being done to 15th June, 1897.

Your orator is advised and maintains, that its rights under the ordinances of the city of Richmond, even if the 5th clause of
9 the ordinance of June, 1884, and of December, 1894, are valid, entitled it to maintain its poles and wires in the streets of said city where they had been placed under resolutions of the committee on streets from time to time.

The first clause of the ordinance of 1884, gave the company the right to run wires and erect poles on the streets of Richmond, on such routes as may be agreed on by the committee on streets from time to time.

And the 5th section provided that the ordinance might be repealed at any time by the city council, such repeal to take effect 12 months after the passage of repealing ordinance.

Your orator submits that the power to repeal an ordinance allowing the erection of poles and running of wires in the streets on such routes as may be agreed on by the committee on streets from time

to time (attempted to be reserved in the 5th section) does not, and cannot, give the power to compel the removal of poles and wires erected on places designated, and destroy thousands of dollars' worth of property acquired under the ordinance while in force, but was simply intended to prevent, after its repeal, the further extension of the erection of poles and running of wires on such routes as may be agreed on by the committee on streets from time to time.

Not only does the 5th section of ordinance of 1884 not authorize or compel the removal of such poles and wires as may have been erected whilst this ordinance was in force, but the ordinance of December, 1894, does not attempt any such wanton and ruthless disregard of the contract rights and destruction of the property of your orator.

It repeals the ordinance and then, specifying what it intends by this, goes on in the second section to say, in speaking of the repealed ordinance, "all privileges and rights granted by said ordinance shall cease and be determined."

"All privileges and rights granted by the said ordinance" are defined by the first section of it to be the permission to erect poles and run wires on such routes as may be specified and agreed, &c., from time to time. The erection of poles and running of wires from time to time on such new routes as might be agreed on are the privileges and rights repealed, and nothing more—if the language of the repealing ordinance and that of the original ordinance be regarded. This company would never have gone to the expense it has in starting and carrying on its business in the city of Richmond, had it supposed for an instant that it held its rights and property subject to the power of the city council at any time to destroy and ruin them, and it insists that the interpretation now sought to be put upon the two ordinances of 1884 and 1894 by the said city is not the true and proper one, and that they do not, and never did, contemplate or authorize the city to compel the removal of the poles and wires of this company, properly located by and with the permission of the committee on its streets, as is contemplated by section 12 of the ordinance passed 10th September, 1895, which provides ruinous fines for allowing poles to remain on the streets of the said city after the 20th of December, 1895.

Your orator further insists that the 5th section of the ordinance of 1884 is and was null and void.

The city council had no authority under the act of the legislature of Virginia, hereinbefore referred to, to annex conditions to its consent to the use of its streets—certainly not to insert a condition which repealed the consent at the option of the city, and was, therefore, inconsistent with it. It should either have granted or refused permission for their use. The legislature carefully provided for its right to repeal and alter and modify the rights of telephone companies in section 1290 of the Code of Virginia.

Your orator, therefore, insists that even if the interpretation of the ordinances be as the city contends, still that the city of Richmond, in attempting to provide by such ordinances the right to take from your orator its vested rights and destroy its property, has ex-

ceeded its powers, and that such ordinances are unreasonable, *ultra vires*, unconstitutional and void.

Your orator further insists that, having accepted the provisions of the act of Congress of 1866, it is entitled to all the rights given thereby, independent of and superior to the consent of the city of Richmond. One of these rights is the right to "construct, maintain and operate" its lines "over and along" the streets of the said city.

The language of the act is: "That any telegraph company now organized, or which may hereafter be organized, under the laws of any State of this Union, shall have the right to construct, maintain and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been, or may hereafter be, declared such by act of Congress.

Your orator asserts that telephone companies and their business are embraced by the terms of this act, and that, in fact, telephone and telegraph companies are, for the purposes embraced by this act, one and the same.

Your orator charges that the post-roads spoken of in this
11 act are not limited to routes on the public domain, but embrace all post-roads of the United States which have been or may hereafter be declared such by act of Congress.

This being so, and the streets and alleys of the city of Richmond being post-roads, it is confidently claimed by your orator that it has the right under this act to occupy the streets and alleys of the city of Richmond for its purposes, guaranteed to it by the Constitution and laws of the United States, superior to any power in the said city to prevent it from so doing. Under this power, your orator claims not only the right to maintain its present poles and wires along the streets and alleys now occupied by it, but to extend them to other streets and alleys as its business, and the business interests of the country and its patrons may require.

Your orator further charges that the said city has granted to the Richmond Standard Telephone Company, a rival telephone company of your orator's, the right to erect poles and wires along many of the same streets and routes which your orator occupied in said city; has allowed said Richmond Standard Telephone Company to put its poles alongside of, close to the poles of your orator, and has allowed said company to string its wires close to, and, in many instances, touching the poles of your orator, thus showing, your orator submits, that its action in attempting to drive your orator from its streets and alleys was taken, not on account of the interference of its poles and wires with the ordinary travel on said streets and alleys, or any inconvenience arising from the occupancy of the streets and alleys thereby, and your orator avers and charges that no such interference or inconvenience, in fact, existed or exists.

Your orator further charges that said city claims the right not only to prevent your orator from extending its lines along other streets and alleys in said city, from connecting new subscribers along its routes now used and occupied, from putting up new and addi-

tional wires along said routes, from replacing old and defective poles and wires along the routes now used by it with new ones, but claims the right to compel your orator to remove said poles and wires now used by it, and to cut them down itself, if it should see fit, and though your orator had made application to the proper authorities of said city to designate the character of poles as under the 4th section of an ordinance of said city, approved 10th Sept., 1895, they are required to do, to be put in the place of poles which are defective and dangerous along its routes, not only was this request not noticed, but the response has been a resolution by the street committee passed upon the statement of one of the committee that "the time had now arrived to take some decisive action to rid the streets of your orator's poles," asking the city attorney and engineer to inform them how the poles of your orator can be gotten rid of. There have been for some time reports that its poles were to be cut down, and it fears, and has reason to fear, it submits, that such action by the city will be taken, and so taken as to ruin its business before it can stop it, if it delays action until the cutting of poles begins.

12

Your orator further states that the officers of said city not only openly proclaim that it has no right to occupy its streets and alleys or carry on its business in the same, but the ordinances hereinbefore mentioned are a standing and constant threat and menace to its rights and privileges, and serve as they were intended to do, to deter and do deter persons who would use its 'phones, from making contracts to do so and from doing so, and have caused many of its subscribers to abandon and give up the use of its 'phones for fear that it will be prevented from giving them service, and its customers are thus driven off to the Richmond Standard Telephone Company, and that by these means its business is being, and will continue to be, as surely injured as if its poles and wires were being cut down and destroyed.

Your orator is advised, and, therefore, states that its contract rights, its franchises and property vested in it are protected by the laws and Constitutions of the United States and of the State of Virginia, to which it confidently appeals for protection against the threatened destruction of them by the city of Richmond; that unless afforded protection in the premises, as asked for in this bill, its property will be destroyed, its business, which it has at great labor and expense built up, ruined, its patrons and customers in and outside of the State of Virginia put to great trouble, inconvenience and loss; your orator will be prevented from carrying out its contracts with its customers, and be thus subjected to the danger of numerous claims for damages and of a multiplicity of suits; and that your orator will suffer great and irreparable wrong and injuries and incalculable loss for which no adequate compensation can be made.

To the end, therefore, that justice may be done, and forasmuch as your orator is remediless in the premises save in a court of equity, it prays that proper process may issue that the City of Richmond may be made a party defendant to this bill, but answer under oath

from it is hereby expressly waived; that said city and all others, its agents and employees, may be restrained and enjoined from removing or interfering with its poles and wires in said city and
13 from interfering with the right of your orator to use said poles and wires, and that all proceedings by said city or its agents and all others to prevent your orator from continuing, renewing, repairing and extending its lines, wires and poles in, along and over the streets and alleys of the said city, and to inflict fines and penalties on your orator for so doing, may be restrained and enjoined; that the right of your orator to use said poles and wires and to carry on its said business along and over the streets of the said city be declared and defined; that the ordinances of said city of the 14th of December, 1894, and of the 10th of September, 1895, so far as they undertake to prevent your orator from maintaining and using its lines, poles and wires over and along the streets and alleys of the city of Richmond, from repairing, renewing and extending its said poles, wires, lines and routes as its business may require may be declared null and void; that your orator may have such other, further, general and complete relief as may be agreeable to equity and the nature of its case; and also that a writ of subpœna issue out of and under the seal of this honorable court directed to the said defendant, The City of Richmond, commanding it upon a certain date therein named, to be and appear in this honorable court, and there to answer all and singular the premises, and to abide by and perform such order and decree as may be entered by the court in the cause.

And your orator, as in duty bound, will ever pray, &c.

THE SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
By COUNSEL.

GEO. H. FEARONS,
STILES & HOLLADAY, AND
LEAKE & CARTER,
Counsel for Plaintiffs.

STATE OF VIRGINIA, }
City of Richmond, } *To wit:*

This day personally appeared before me, a notary public in and for the city of Richmond, in the State of Virginia, C. E. McCluer, and made oath that the statements contained in the foregoing bill are true, so far as made on his own knowledge, and that he believes them to be true so far as made on information derived from others.

Given under my hand this 5th day of October, 1896.

WM. E. CRAWFORD, *N. P.*

14 "EXHIBIT A" WITH BILL.

Filed October 6, 1896.

(Copy.)

To all whom it may concern:

Be it known that the Southern Bell Telephone and Telegraph Company, a corporate body organized under the laws of the State of New York, through its duly authorized officers, whose signatures are hereunto attached, does hereby accept, without reservation, all of the restrictions and obligations of the act of Congress approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes." And the said company does especially agree that telegrams between the several departments of the Government and their officers and agents shall at all times have priority over all other business in their transmission over the lines of said company, and that the charges for such telegrams shall not exceed the rates annually fixed by the Postmaster General.

This declaration of acceptance is made in order that said Southern Bell Telephone and Telegraph Company may be entitled to the rights and privileges granted by the act of Congress aforesaid.

Done at New York city this 13th day of February, 1889.

[Seal Southern Bell Telephone & Telegraph Co.]

SOUTHERN BELL TELEPHONE
AND TELEGRAPH COMPANY,
By JNO. VAN HORN, *President.*
D. J. CARSON, *Secretary.*

POST-OFFICE DEPARTMENT,
WASHINGTON, D. C., *Feb'y 18th*, 1889.

I, Don M. Dickinson, Postmaster General of the United States of America, certify that the annexed is a true copy of the original acceptance on file in this department.

Seal Post-office Department, United States of America.

In testimony whereof I have hereunto set my hand and caused the seal of the Post-office Department to be affixed, at the city of Washington, the day and year above written.

DON M. DICKINSON,
Postmaster General.

15 "EXHIBIT B" WITH BILL.

Filed October 6th, 1896.

(Copy.)

W. E. Cutshaw, city engineer. (Received June 27, 1894.)

CITY ENGINEER'S OFFICE,
RICHMOND, VA., *June* 26, 1894.

Mr. C. E. McCluer, general manager So. Bell. Telephone Co.:

DEAR SIR: At a meeting of the committee on grounds and buildings, held on June 20th, 1894, I was directed to communicate with you and state their requirement to have your company furnish free telephone service through your regular exchange to the following offices in the city hall:

Basement.	First floor.
Fire chief's office,	Assessor's office,
Supt. charities,	Gas inspector's office,
Clerk police court,	Water works,
High constable's office,	Treasurer's office,
Board of health,	Auditor's office,
Coroner,	Collector's office,
Calder's office.	Mayor's office,
	Chief of police.

Second floor.	Third floor.
Clerk hustings court,	City engineer,
Clerk circuit court,	Council,
Clerk chancery court.	City attorney.

Fourth floor.

Fire-alarm,
School board,
Clerk law and equity court.

Also six private line 'phones between the following offices: Calder's room with boiler-room and engine-room, all in basement; water work's office on first floor with messenger's room in basement, and fire-alarm office on fourth floor with battery-room in basement.

Please arrange to put these 'phones in operation at the earliest day practicable.

Very truly,
(Signed) W. E. CUTSHAW,
City Engineer.

(Answered June 28, 1894.)
(D. J. C., July 5, 1894.)

16 "EXHIBIT C" WITH BILL.

Filed October 6th, 1896.

(Copy.)

RICHMOND, VA., *November* 2, 1894.

Chairman and members of subcommittee on grounds and buildings, Richmond, Va.

GENTLEMEN: Responding to the demand of the committee on grounds and buildings for free telephone service for the new city hall offices, I am instructed by our executive officers to make the following proposition:

We will make a discount of 50 % on all municipal stations, none to be free except the mayor's residence.

We now pay to the city of Richmond a cash tax of $810. We furnish, without charge, poles for carrying city wires, valued at $1,000. We propose a discount of 50 % on all municipal stations equivalent to about $900 on the present list.

We pay also the State a tax of over $1,500 on our Richmond plant, making a total of over $4,000.

Yours respectfully,

(Signed) C. E. McCLUER,

Supt. for Southern Bell Telephone and Telg. Co.

"EXHIBIT D" WITH BILL.

Filed December 5th, 1896.

RICHMOND, VA., *November* 2, 1896.

Mr. C. E. McCluer, superintendent So Bell Telephone Co., Richmond, Va.

DEAR SIR: In addition to the number of 'phones called for in our communication dated June 26, 1894, the city of Richmond will require free telephone service as follows:

Alms-house,	Upper gas works,
Lower gas works,	1st, 2d, 3d police stations,
City jail,	City stables.
Oakwood cemetery,	

Our subcommittee will expect an answer by 5 o'clock p. m. on Monday next.

Very respectfully,

(Signed) W. E. CUTSHAW,

City Engineer.

17 "EXHIBIT E" WITH BILL.

Filed October 6th, 1896.

(Copy.)

RICHMOND, VA., *Nov.* 5, 1894.

Col. W. E. Cutshaw, city engineer, city.

DEAR SIR: With reference to your letter of November 2d in which you state that the city of Richmond requires free telephone service to nine points in addition to those stated to be required in your letter of June 26th, making altogether thirty-nine free stations, I am instructed to say that the officers of our company regret that you are unwilling to accept our proposition of the 2d inst., offering to furnish the city of Richmond telephone service as the same might be called for for municipal offices of the city of Richmond on the basis of one-half our regular schedule rates.

We are now paying the city of Richmond license and other taxes amounting to	$810 00
Our offer to furnish the city of Richmond telephones at half rate would for 30 stations amount to	900 00
Total per year	$1,710 00

Thirty-nine free stations and the taxes we are now paying would amount to $3,240 per year. This demand is greater than has been made in any city in the country, and we are reluctantly compelled to decline it.

The company has been long an applicant to the city of Richmond for the privilege of putting down a system of underground conduits for the conduct of its business, and we are still desirous of having this privilege. We are willing and anxious to meet the authorities of the city of Richmond that arrangements may be made by which the municipal offices of the city of Richmond shall have facilities for the proper conduct of its business. Is it too much to ask that the obligation of the company to the city for telephone service shall be kept within reasonable limits, and that the company shall be authorized and enabled to make its construction and repairs in a manner to meet the requirements of the public and of the business? In view of all this we respectfully ask that further consideration of the subject be postponed until the requirements of the city for municipal service and the needs of the company can be fairly considered.

Yours respectfully,

(Signed) C. E. McCLUER, *Supt.*

18 "EXHIBIT F" WITH BILL.

Filed October 6th, 1896.

(Copy.)

An Ordinance

(Approved December 14, 1894.)

Repealing an ordinance approved June 26, 1884, concerning the Southern Bell Telephone and Telegraph Co.

Be it ordained by the council of the city of Richmond—

That the ordinance approved June 26, 1884, granting the right of way throughout the city to the Southern Bell Telephone and Telegraph Company be, and the same is hereby, repealed.

2. That in accordance with the fifth section of said ordinance all privileges and rights granted by said ordinance shall cease and be determined at the expiration of twelve months from the approval of this ordinance by the mayor.

"EXHIBIT G" WITH BILL.

An Ordinance.

Filed October 6th, 1896.

As to the joint use of poles erected in the streets and alleys of the city of Richmond for the support of wires used in connection with the transmission of electricity.

(Approved September 10, 1895.)

Be it ordained by the council of the city of Richmond—

1. That all poles now erected in the streets or alleys of the city of Richmond, for the support of wires used in connection with the transmission of electricity, except such as support wires required by the city ordinances, to be removed and run in conduits, shall hereafter be allowed to remain only upon the terms and conditions hereinafter set forth.

2. No pole now erected for the support of telephone wires shall remain on any street in said city after the 15th day of December, 1895, unless the owner or user of such pole shall first have
19 petitioned for and obtained the privilege of erecting and maintaining poles and wires for telephone purposes in accordance with the conditions of this ordinance, and such other conditions as the council may see fit to impose. And if such owner, failing to obtain such privilege as above required, shall neglect or fail to remove such pole or poles and telephone wires supported thereon from the streets or alleys of the city by the 20th day of December, 1895, and restore the street to a condition similar to the rest

of the street or alley contiguous thereto, the said owner shall be liable to a fine of not less than five nor more than one hundred dollars for every such pole so remaining in the street or alley; to be imposed by the police justice of the city; each day's failure to be a separate offense.

3. The committee on streets may hereafter require any person or company owning any such poles, used for telephone or telegraph purposes, to allow any other person or company to place upon its poles and in such positions thereon any telegraph, telephone, or any other light current wire which may be used for the transmission of electricity now belonging to, or that may hereafter belong to, any person or company authorized by the council to run wires in the streets or alleys as the committee may, from time to time, deem proper, and which will not, in the opinion of said committee, unreasonably interfere with the business of the person or company owning such poles, and upon such terms and conditions as may be agreed upon by the said owner and any person or company desiring to use such poles; and in the event that said owner and the person or company desiring to use said poles cannot agree upon satisfactory terms and conditions, the same shall be settled by three disinterested persons—one to be selected by such owner, one by the person or company desiring the use of said poles, and the third by the two persons so selected; and the terms and conditions which shall be fixed and determined by said persons, or a majority of them, shall be the terms and conditions upon which said company or companies, respectively, shall use and occupy said poles. If the said owner shall, for thirty days after having been requested in writing to appoint its representative, fail to make such appointment, then the city engineer shall make such appointment, and the person so appointed shall have the powers he would have had if he had been appointed by the said company. If the two arbitrators, selected in either of the two manners above specified, shall fail for thirty days after their appointment to select the third arbitrator, then the city engineer shall select such third arbitrator, and when so selected he shall have the same powers he would have had if he had been appointed by the said two arbitrators. Or if, after the three arbitrators shall have been appointed in any of the modes above specified, they shall fail to settle and determine said terms and conditions within thirty days from the date of the appointment of said third arbitrator, then the city engineer shall have power to select a person who shall have power to settle and determine said terms and conditions. Should either the said owner or any person or company that may under this section enter upon and use the poles of the said owner, fail to keep and perform each and every one of the terms as to the use of said poles, the company so failing shall be liable to a fine of not less than ten nor more than one hundred dollars for such failure; each day's failure to be a separate offence. The said committee shall have the power to require said owner to allow any person or company desiring to enter upon and use said poles to so enter and use the same, under such conditions as the city engineer may prescribe, as soon as the said person

or company so desiring to enter shall have appointed its arbitrator; but the person or company so entering shall do so under contract and bond that he or it will abide by and conform to the terms and conditions determined upon by the arbitrators, as soon as such decision shall be announced. And the said committee shall have power also to require, from time to time, the said owner, or any other person or company using said poles, to afford and furnish such protection or protections to all wires on such poles as the said committee may deem proper or necessary in order to allow such wires to perform the purposes or functions for which they were intended. All work as to placing of wires now upon the poles of any other company shall be done at the cost and expense of the party desiring to use such poles. Each and every one of the above-stated provisions shall respectively apply to poles now carrying electric light, electric power and electric car wires, to the extent of entitling any person or company, authorized by the council to run wires over the streets and alleys and authorized by said committee, in accordance with the terms of this ordinance, to place on any such pole any electric light, electric power, electric car wires, or other heavy current wires which may be used for the transmission of electricity. For any failure to perform any requirement ordered under this section within ten days after being notified of such requirement by the city engineer, each party so in default shall be liable to a fine of not less than fifty nor more than five hundred dollars; each day's failure to be a separate offence.

21 4. Hereafter no pole shall be erected until the city engineer shall have first determined upon the size, quality, character, number, location, condition, appearance and manner of erection of such poles.

5. Each and every permission herein given is granted under the condition that the city shall have the right by and through the board of fire commissioners to run all wires needed for the fire-alarm and police telegraph department on all poles erected or allowed under this ordinance to remain on any street or alley of the city, and in such positions on said poles as shall seem proper to the superintendent of said department. Whenever any permission has been granted by the council or the street committee to any person or corporation to erect any pole or poles for the support of wires used for the transmission of electricity, it shall be the duty of such person or corporation, before erecting any such pole or poles, to submit to the board of fire commissioners a diagram showing the proposed location of such poles and arrangement of poles and wires, so as to enable said superintendent to select and require to be reserved such positions on any such pole or poles as he may deem proper and necessary.

6. No person or company shall use the poles, wires or other apparatus, above referred to, of any other person or company until he or it shall have filed with the city engineer a written application, fully setting forth what poles or other apparatus he or it shall desire to use, nor until receiving from said engineer a written notification that the said committee has given the applicant permission

to so use the same in accordance with the provision of this ordinance.

7. The city council hereby reserves the right to put at any time other restrictions and regulations as to the erection and use of said poles, wires, and other apparatus used in connection with transmission of electricity, and from time to time require such poles as it may deem proper to be removed, and the wires thereon to be run in conduits upon such terms as the city may deem proper.

8. All persons and corporations having, using or maintaining any telegraph, telephone, electric light or other poles in any of the parks, streets, lanes or alleys of the city of Richmond, shall annually, between the fifteenth day of December and the first day of January, in each and every year, file with the city engineer, a list of all such poles so used, possessed or maintained by him or them, giving the accurate locations of each of such poles, and of the number and character of wires carried thereon, the names of the owners of said poles and of the persons using the same, and shall at all times keep stamped, painted or printed thereon, in legible characters, their name as owner upon each of such poles. A copy of such list shall be furnished by said engineer to the city auditor and to the superintendent of fire-alarm and police telegraph.

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9. Annually, between the first day of January and the fifteenth day of January, all persons or corporations shall pay to the city treasurer a fee of two dollars for each and every telegraph, telephone, electric light or other pole used, possessed or maintained by them in any of the parks, streets, lanes or alleys of the city of Richmond, except trolley poles, used exclusively for stringing thereon wires for use in the propulsion, by electricity, of street passenger cars. Upon the receipt of the above fee by said treasurer, the city auditor shall deliver to the person or corporation paying the same a tin plate, with a plain and conspicuous number thereon, to be provided in the manner prescribed in the next succeeding section, for each and every pole upon which the said license fee is paid, and shall also enter in a book, to be kept for that purpose, the name of the person or corporation to whom the license is issued, and the number of poles for which it is issued, and the number of tin plates delivered to the person paying such license fee; he shall also deliver to such person or corporation a certificate, under his own hand, that such person or corporation has paid the required license fee for that year on the specified number of poles, and has received the tin plates of the given numbers therefor; such person or corporation shall then have one of such tin plates securely fastened, in some conspicuous place, upon each of the poles used, possessed or maintained by it or him, as may be designated by said superintendent.

10. It shall be the duty of the city auditor, annually, on or before the fifteenth day of January in each and every year, to purchase a sufficient number of tin plates, numbered with plain, conspicuous figures, beginning with number one, and so on progressively, to be furnished, as prescribed in the preceding section of this ordinance,

to the persons or corporations using, possessing or maintaining telegraph, telephone, electric light, or other poles other than trolley poles, used exclusively for stringing wires thereon for use in the propulsion, by electricity, of street passenger cars. The city auditor shall cause to be stamped with a proper die, or painted on each of such tin plates, the year in which they are issued, the said plates to be of suitable size and description, in the discretion of the city auditor.

23 11. After the 20th day of January, 1896, all telegraph, telephone, electric light and other poles in any of the streets, lanes and alleys of the city of Richmond (except troll-y poles used exclusively for stringing thereon wires for use in the propulsion of street passenger cars), which shall have not been included in any list filed in accordance with the eighth section of this ordinance with the city engineer, or upon which the name of the owner is not legibly painted, printed or stamped, or upon which the above-mentioned license fee has not been paid, or on which the above-prescribed tin plate is not securely fastened in some conspicuous place, shall be forthwith removed by its owner.

12. Any person or persons, or corporation, using, possessing or maintaining any telegraph, telephone, electric light, or other poles, in any of the streets, lanes and alleys of the city of Richmond, who shall fail to file with the city engineer the list as prescribed in section 8 of this ordinance, or who shall fail to have stamped, printed or painted in legible characters his or its name as owner upon each of such poles as prescribed in said section 8 by the 20th of January of each and every year, or who, if belonging to the classes required to pay a fee of two dollars on each pole, by section 8, shall fail to pay the said fee, or shall fail to have the tin plate therein prescribed securely fastened in some conspicuous place by the said 20th day of January of each and every year; upon all such telegraph, telephone, electric light or other poles so used, possessed or maintained by him or them, shall be liable to a fine of not less than five nor more than one hundred dollars for each pole upon which he, they or it are so in default; and each day of default to be a separate offence. Such fines to be imposed by the police justice of Richmond.

13. It shall be the duty of the chief of police to require the police captains of each police district to report to him, on the last Monday in November of each year, that they have had examined each pole in their respective districts used for the support of wires carrying electricity, and whether any or all are in a safe condition. The said chief of police shall, upon receipt of such reports, forward the same to the superintendent of fire-alarm and police telegraph, who shall require the person or company owning any such pole reported to be unsafe, and deemed by the said superintendent to be unsafe, to remove the same. Any such person or company, who, after being so notified, shall fail to have the same removed within forty-

24 eight hours after being so notified, shall be liable to a fine of not less than ten nor more than fifty dollars; each day's failure as to each pole so declared unsafe shall be a separate offence.

14. The chief of the fire department and the superintendent of fire-alarm and police telegraph shall each have power, and it shall be their duty, to examine and inspect from time so time all poles and every wire or cable over the streets, public grounds or buildings when such wire is designated to carry an electric current; shall notify the person or corporation owning or using such poles, when any such pole is unsafe, or owning or operating any such wire or cable whenever its attachments, insulation, supports or appliances, are unsuitable or unsafe, and that the said poles, wires or cables must be properly replaced, renewed, altered or constructed, and shall require the owner of any wire abandoned for use to remove the same. Any person or company failing to perform any requirement made of him or it by either the said chief of fire department or said superintendent, under this section, shall be liable to a fine of not less than five nor more than one hundred dollars; each day's failure to be a separate offence.

15. Any person or corporation who now has permission from the city council to run wires over the streets or alleys in the city, or may hereafter obtain such permission, may obtain additional routes for its wires when his or its business shall demand the same, and when the said committee shall authorize such additional routes subject to the conditions, restrictions, limitations and charges herein set forth.

16. All wires shall be fastened upon poles or other fixtures with glass, porcelain or rubber insulators approved by the superintendent of fire-alarm and police telegraph, and must be stretched tightly and fastened with a tie of the same kind of wire. No wires shall be stretched within four inches of any pole, building or other object without being attached to it and insulated therefrom. All wires strung on house tops must be at least nine feet clear of roof.

17. No wire shall be within twenty-five feet of the pavement at the lowest point of sag between supports, except where required to reach a lamp or other connection, and must then be protected by extra covering, and be rigidly fixed and out of the way. No wire shall be run within eighteen inches of a city wire. No tree shall be cut or disturbed without consent of the city engineer.

25 18. All electric light and power conductors, except trolley wires, shall be secured to insulated fastenings, and covered with an insulation which is waterproof on the outside and not easily worn by abrasion. Whenever the insulation becomes impaired it must be renewed immediately. All joints must be as well insulated as a conductor, and the insulation of joints must be maintained.

19. Every wire or cable must be distinguished by a number plainly marked on each cross-arm under the insulator. Day circuits must be conspicuously designated. All arc lamps must be so placed as to leave at least a space underneath of at least nine feet clear between lamp and sidewalk. Every line for arc light or power entering a building shall be controlled by a cut-off placed near the entrace, in sight and easily accessible.

20. In the construction of lines the insulation to be used must be approved by the superintendent of fire-alarm and police telegraph in writing, filed with the board of fire commissioners, and the in-

sulation resistance must be maintained in accordance with the standard to be not less than three megohms per mile per 100 volts. And under no circumstances shall underwriters' wire be used.

21. All connections with lines of electric light or power conductors shall be made at right angles to the same; and connections to buildings shall be straight across to the building, and then down the front of the building. The insulation must be preserved throughout the entire circuit, and if any portion of a lamp or fixture is a part of a circuit and can be touched, it must be insulated. All conductors shall have a resistance uniformyly distributed of not more than thirty ohms per mile per ampere, and proportionately less for heavier currents.

22. All circuits for electric light or power must be tested every hour, and when a ground comes on effort must be made to remove it at once. Failing in this, the circuit must be discontinued until the insulation is restored. No unused loops for electric light circuit shall be allowed to remain after lamps have been taken away, except in cases where it is positively known that the lamp would be required again within three months, and where there is no underground current for that class of circuits. When allowed to remain, the joint in the loop must be as well insulated as the line itself.

26 23. Nothing is this ordinance is intended to relieve any person or company of any condition, restriction or requirement imposed upon said person or company by the ordinance in which it has been authorized to place in said streets or alleys any poles, wires or other apparatus for the transmission of electricity.

(35) 24. Each and every provision of this ordinance, unless otherwise provided, shall apply to any pole, wire or other apparatus used in connection with the transmission of electricity hereafter erected in said streets or alleys, whether the same be erected by way of repairs or for additional routes or for any other purpose.

25. Any person violating any restriction, provision, or condition imposed by this ordinance, or failing to perform any requirement made under the ordinance by the city engineer, the superintendent of fire-alarm and police telegraph department, or chief of the fire department, as to which there is not in this ordinance a fine specifically imposed, shall be liable to a fine of not less than ten, nor more than five hundred dollars, to be imposed by the police justice of said city; each day's violation or failure to be a separate offence.

This ordinance shall be in force from the 15th day of December, 1895.

EXHIBIT "H" WITH BILL.

Filed October 6th, 1896.

(Copy.)

An Ordinance

(Approved September 10, 1895.)

To require the removal of poles and wires from overhead in certain streets, and for the construction and using of conduits in certain streets.

1. The telegraph, telephone and electric light and power wires and cables, including feed (but excluding trolley wires), and all other appliances for conducting electricity, and the poles therefor, heretofore*fore* and now being in any street, alley, or public ground of the city, are hereby ordered to be removed from the following-named streets—to wit: On Broad street from the western side of Adams street to the east side of Eleventh street; on Bank street from western side of Ninth street to the eastern side of Twelfth
27 street; on Main and Cary streets from western side of Seventh street to eastern side of Fourteenth street; on Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth streets from northern side of Broad street to southern side of Cary street, within twelve months from the 15th day of June, 1895. Any company, corporation, partnership, or individual, owning or controlling any such overhead wires, cables, or appliances or poles, that refuses, neglects, or fails to remove them from overhead within the time, as hereinbefore provided, shall be liable to a fine of not less than $100 nor more than $500 for each pole so remaining, to be imposed by the police justice of the city of Richmond; and for every week of continued failure and neglect to so remove them after the imposition of the fine above mentioned, such company, corporation, partnership, or individual shall be liable to a fine of not less than $100 nor more than $500, to be imposed as above stated.

2. The city council will grant permission to any company, corporation, partnership or individual to place its wires and electrical conductors in conduits under the surface of the said streets of the city; any such individual, partnership, corporation or company desiring such permission shall petition to the council therefor; such petition shall name the streets, alleys, and the side and portions thereof to be used and occupied by such conduits, and shall submit maps, plans and details thereof to accompany such petition. Such permission shall be granted by the city council upon the conditions that the petitioner shall furnish a bond to the city, to be approved by the mayor, and the penalty to be prescribed by such permission; that the pavement of the streets and alleys wherein such conduits are laid shall be properly replaced, and shall be kept in proper repair to the satisfaction of the city engineer; and that the city shall

be saved harmless from any and all damages arising from laying such conduits; that such conduits shall be of sufficient capacity to accommodate the wires in such streets and alleys, and to provide for an increase thereof to, at least, the extent of 100 per cent.; such increase of space is not to be occupied by any such company, corporation, partnership or individual, directly or indirectly, without the consent of the city council; that the wires of the city shall be carried in such conduits free of charge, and at least one duct shall be reserved for such wires; after obtaining the consent of the city council, any other person or corporation now having wires in said street, or hereafter desiring to run wires therein, may occupy
28 proper and necessary portions of such conduits upon such terms as may be agreed upon with the petitioner, and, in case of a disagreement, upon terms to be determined by arbitration as herewith provided; any such company, corporation, partnership or individual so placing its wires underground in any street, alley, or public ground of said city, shall, upon notice from the city or any of its departments, that a local improvement or gas sewer or water main, or branch thereof, is to be constructed or repaired in such manner as will necessitate the moving or altering of its conduit or conduits or their appurtenances of said individual, partnership, company, or corporation, move or alter the same at its own expense, so as to permit the construction of the improvement where ordered, and should any company or corporation omit to comply with such notice, the conduit or conduits, or their appurtenances, may be altered or moved by the city, and the cost and expense thereof recovered from such individual, company, or corporation. Manholes shall at all times conform to the grades of the streets. The location, size, shape, and subdivision of such conduits, and the material of which they shall be made and manner of construction, shall be satisfactory to the committee on streets. The work of laying underground conduits, tubes, pipes, electrical conductors, cables and wires, shall be under the direction and to the satisfaction of the superintendent of fire-alarm and police telegraph, who at all times shall have free and unobstructed access to the conduits, tubes, pipes, electrical conductors or cables, for the purpose of inspecting the same or making connection therewith for conduit wires or conductors in use or to be used by the city.

3. Wherever any wire or cable run in such conduit shall come out of such conduit for the purpose of being continued and run overhead upon poles, all precautions which may be required from time to time by the committee on streets shall be taken for the protection and safety of all persons and property.

4. The terms upon which any person or company, after obtaining permission from the city council, may enter with its wires and use such conduits shall be as follows: In the event that said owner and the person or company desiring to use said conduit cannot agree upon satisfactory terms and conditions, the same shall be settled by three disinterested persons, one to be selected by such owner, one by the person or company desiring the use of said conduit, and the third by the two persons so selected; and the terms and conditions

which shall be fixed and determined by said persons, or a
29 majority of them, shall be the terms and conditions upon which said company or companies, respectively, shall use and occupy said conduit. If the said owner shall, for thirty days after having been requested in writing to appoint its representatives, fail to make such appointment, then the city engineer shall make such appointment, and the person so appointed shall have the powers he would have had if he had been appointed by the said company. If the two arbitrators, selected in either of the two manners above specified, shall fail for thirty days after their appointment to select the third arbitrator, then the city engineer shall select such third arbitrator, and when so selected he shall have the powers he would have had if he had been appointed by the said two arbitrators. Or, if after the three arbitrators shall have been appointed in any of the modes above specified, they shall fail to settle and determine said terms and conditions within thirty days from the date of the appointment of said third arbitrator, then the city engineer shall have the power to select a person who shall have power to settle and determine said terms and conditions. Should either the said owner or any person or company that may, under this section, enter upon and use the conduit of the said owner, fail to keep and perform each and every one of the terms as to the use of said conduit, the company or person so failing shall be liable to a fine of not less than fifty, nor more than five hundred, dollars for such failure; each failure to be a separate offence. The said committee shall have the power to require said owner to allow any person or committee desiring to enter upon and use said conduit to so enter and use the same, under such conditions as the city engineer may prescribe, as soon as the said person or company so desiring to enter shall have appointed its arbitrator; but the person or company so desiring to enter shall do so under contract and bond that he or it will abide by and conform to the terms and conditions determined upon by the arbitrators, as soon as such decision shall be announced. And the said committee shall have power also to require from time to time the said owner, or any other person or company using said conduit, to afford and furnish such protection or protections to all wires in such conduit as the committee may deem proper and necessary in order to allow such wires to perform the purposes or functions for which they were intended. For any failure to perform any requirement ordered under this section, within ten days after being notified of such requirement by the city engineer, each party so in default shall be liable to a fine of not less than fifty, nor more than five hundred, dollars; each day's failure to be a separate offence.

30 5. No privilege as to the building and owning of said conduits shall last longer than fifteen years, at the expiration of which time the city may put such other restrictions, conditions and charges as it may see fit, and shall be lawful, or may order its removal at the expense of the owner.

6. For the privilege of using and occupying the streets of the city as herein proposed, each person or corporation owning or using any

wire or wires run in such conduit shall each year, until January 1st, 1900, pay to the city treasurer a sum equal to $2.00 per wire per mile so owned or used by said person or company. On or after January 1st, 1900, the city council reserves the right to charge such larger compensation for the rest of the term of the privilege as it may see fit. Each person or corporation shall, on the 15th day of June and January of each year, pay to the city auditor a sum equal to $1.00 per wire per mile then owned or used by such person or corporation, and shall render to the auditor a sworn statement as to the number and length of each of the wires then owned or used by him or it. The committee on finance may, when it may see fit, have the books of the person or corporation rendering such statement examined by a book-keeper employed by said committee to ascertain whether such statement is accurate. For failure to allow such examination, whenever requested by the finance committee, the person or corporation owning any wires in such conduits shall be liable to a fine of not less than one hundred nor more than five hundred dollars for each wire of said person or company admitted or proven to be in such conduit; and for failure to pay such semi-annual compensation upon the days above specified, the person or company shall be liable to a fine of not less than ten nor more than five hundred dollars; each day's failure to be a separate offence.

7. The conduits herein required shall be extended from time to time, whenever required by the city council, to cover streets or alleys upon which the council may determine from time to time that no overhead wires shall be run.

This ordinance to be in force from the 15th day of June, 1896.

31 "EXHIBIT K" WITH BILL.

Filed October 6th, 1896.

(Copy.)

Ordinance

Granting the right of way throughout the city to the Southern Bell Telephone and Telegraph Company.

1. Permission is hereby granted the Southern Bell Telephone and Telegraph Company to erect poles and run suitable wires thereon, for the purpose of telephonic communication throughout the city of Richmond, on the public streets thereof, on such routes as may be specified and agreed on by a resolution or resolutions of the committee on streets, from time to time, and upon the conditions and under the provisions of this ordinance.

2. On any route conceded by the committee on streets, and accepted by the company, the said company shall, under the direction of the city engineer, so place its poles and wires as to allow for the use of the said poles by the fire-alarm and police telegraph, in all cases giving the choice of position to the city's wires, wherever it

shall be deemed advisable by the council or the proper committee to extend the fire-alarm and police telegraph over such route.

3. The telephone company to furnish telephone exchange service to the city at a special reduction of ten dollars per annum for each municipal station.

4. No shade trees shall be disturbed, cut or damaged by the said company in the prosecution of the work hereby authorized without the permission of the city engineer and consent of the owners of property in front of which such trees may stand, first had and obtained; and all work authorized by this ordinance shall be, in every respect, subject to the city engineer's supervision and control.

5. The ordinance may at any time be repealed by the council of the city of Richmond; such repeal to take effect twelve months after the ordinance of resolution repealing it becomes a law.

32

Injunction.

Entered Oct. 6, 1896.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH CO., Plaintiff,
vs.
CITY OF RICHMOND, Defendant. } In Equity.

On reading the bill and exhibits of the plaintiff, the court doth restrain and enjoin the defendant, The City of Richmond, its agents, employees and all others from cutting, removing, injuring or in any way interfering with the poles, wires, instruments and business of the plaintiff in said city along and over the routes in said city now used by it, from interfering in any way with the proper use, maintenance and repairs of said poles, wires and instruments of said plaintiff, and from taking proceedings to impose fines or penalties on said plaintiff for using, maintaining and keeping in repair its said poles, wires and implements until the further order of the court, but leave is given the defendant upon ten days' notice to move to vacate this temporary restraining order, and it is required to show cause before this court at its court-room in the city of Richmond, Va., on the 17th day of November, 1896, why the injunction herein should not be made perpetual, and such further injunction awarded as is prayed for in the bill in this case. But this injunction is not to be effectual until the plaintiff or some one for it shall enter into bond in the penalty of $1,000 to be approved by one of the judges of this court, conditioned to pay all such costs and damages as may be awarded the defendant should this injunction be dissolved; and thereupon came the Virginia Trust Company, by A. L. Holladay, its attorney-in-fact, and executed the above-required bond, which bond was approved by the judge granting this injunction.

NATHAN GOFF,
U. S. Circuit Judge.

October 6, 1896.

33 *Demurrer to Bill.*

Filed November 16th, 1896.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
vs.
CITY OF RICHMOND.

The demurrer of the above-named defendant, City of Richmond, to the bill of complaint of the above-named plaintiff.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner or form as the same are therein set forth and alleged, doth demur to the said bill, and saith that the same is not sufficient in law, and for causes of demurrer showeth:

1st. That it appeareth by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed for by the said bill against this defendant.

2nd. That the act of Congress, entitled "An act to aid in the construction of the telegraph lines and to secure to the Government the use of the same for postal, military and other purposes," approved July 24, 1866, and claimed in said bill as furnishing protection to said complainant against respondent does not apply to the said complainant, and only applies to telegraph companies.

3rd. That said act of Congress, approved July 24, 1866, if it shall apply at all to the complainant, does not give it any right to erect its poles and run its wires along the streets of the respondent without the consent of the respondent, subject to reasonable regulations as to the routes, position and number of the poles and pay for the use of its streets.

4th. That if said act of Congress, approved July 24, 1866, puts the said complainant as free of the control of the respondent as is claimed in said bill of complaint, the said act is unconstitutional and void.

5th. That notwithstanding the power of Congress in matters of interstate commerce, and notwithstanding the enactment of said act of Congress, approved July 24, 1866, the complainant had no right to erect its poles and run its wires along the streets of the respondent without the consent of the said respondent, and upon such
34 reasonable terms as to the routes, position and number of poles and pay for the use of the said streets as the said respondent might impose.

6th. That the manner of determining as to the routes of the poles and wires of said complainant and the compensation to be paid the city, was agreed upon in the ordinance of said respondent and cited in said bill of complaint, as approved June 26th, 1884,

upon condition that the city should reserve the right to require the complainant to remove said poles and wires after the expiration of twelve months, alluded to in said ordinance.

7th. That the poles and wires of the complainant, as appears from said bill of complaint, were erected under an agreement contained in the ordinance of said respondent, and cited in said bill of complainant as approved June 26, 1884, and that the respondent in passing the ordinance, approved December 14, 1894, and referred to in said bill of complaint as requiring the complainant to remove its poles and wires, merely exercised the power rightfully reserved in said ordinance approved June 26, 1884.

8th. That under the statute of Virginia, referred to in said bill of complaint, the respondent was given authority to reserve the power of revocation contained in the said ordinance mentioned in said bill as approved June 26, 1884.

9th. The power of revocation reserved in said ordinance approved June 26, 1884, has been properly exercised in the ordinance cited in said bill as approved December 14, 1894.

Wherefore and for divers other and good causes of demurrer appearing on said bill, this defendant doth demur thereto.

And it prays the judgment of this honorable court, whether it shall be compelled to made any answer to the said bill, and it may humbly pray to be hence dismissed with its reasonable costs in this behalf sustained.

CITY OF RICHMOND,
By COUNSEL.

C. V. MEREDITH.

I certify that the foregoing demurrer is, in my opinion, well founded in point of law.

C. V. MEREDITH,
Counsel for City of Richmond.

35 STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

Richard M. Taylor, being duly sworn, deposeth and says: I am the mayor of The City of Richmond, the above-named defendant. The foregoing demurrer is not interposed for delay.

W. P. LAWTON,
Notary Public.

Order Filing Demurrer and Setting Demurrer Down for Argument.

Entered Jan. 14th, 1897.

SOUTHERN BELL TELEPHONE AND TELEGRAPH CO., Complainant,
vs.
CITY OF RICHMOND.

This cause came on to be heard on the demurrer heretofore deposited with the clerk, and which is now filed by leave of the court,

which demurrer was, on motion of the complainant, set down for argument, *and* the hearing of this case on the temporary restraining order having been adjourned to this day by consent of parties without waiving or effecting any rights of either party.

NATHAN GOFF,
U. S. Circuit Judge.

Opinion Overruling Demurrer.

Filed February 24th, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
vs.
THE CITY OF RICHMOND.
} In Equity.

GOFF, *Circuit Judge:*

This case is now in my hands for hearing upon the bill of complaint and the demurrer thereto. The demurrer admits the allegations of the bill properly pleaded. Bearing this in mind we will have but little trouble in reaching a conclusion on the questions now to be disposed of. The allegations in the bill claimed by defendant to be legal conclusions—from the facts and circum-
36 stances set forth—will not be considered as admitted by the demurrer unless such facts and circumstances are found to clearly sustain the contention of complainant.

The complainant is a corporation duly organized and doing business under the laws of the State — New York, and the defendant is a municipal corporation existing under the laws of the State of Virginia. The complainant is engaged in the business of a telephone company, in, through and between the States of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, and has been so engaged for the past fifteen years. It has, in conducting its business, erected and maintained lines of wires and poles through and along certain of the streets and alleys of the city of Richmond, under and by authority of the common council and board of aldermen of said city, and by virtue of the laws of the State of Virginia and of the United States.

It is alleged that the complainant is a telegraph company, under the laws of the United States and of the State of Virginia, and that it was chartered as such under the general laws of the State of New York, relating to telegraph companies. It is set forth in the bill that complainant in the city of Richmond maintains a telephone office, connected by wires with a large number of subscribers, all of whom are connected with the office of the Western Union Telegraph Company in that city, and that all such subscribers may, and many of them do, transmit through their instrument connected with said wires, and through such office of complainant, to the

Western Union Telegraph Company, messages addressed and intended to be sent, and which are sent to points in other States, the District of Columbia and foreign countries, under an agreement which has existed for years between the complainant and said Western Union Telegraph Company.

Complainant also claims that its wires, poles and instruments as located and used along and over the streets of the city of Richmond, are so located and used under the provisions of, and are protected by the laws of the United States, for the reason that on the 13th of February, 1889, it duly filed with the Postmaster General of the United States its acceptance of the terms of the act of Congress, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes," approved July 24th, 1866, by which it was, among other things, provided that any telegraph company then formed, or thereafter organized, under the laws of any State, which would file a written acceptance with the Postmaster
37 General of the restrictions and obligations of said act, should have the right to conduct, maintain and operate lines of telegraph over and along any of the military roads and post-roads of the United States which had then been or might thereafter be, declared such by law.

It is also alleged that the city of Richmond, on the 26th of June, 1884, in pursuance of the power given it by section 1288 of the Code of Virginia, passed an ordinance by which the complainant was granted permission to erect poles and run wires thereon for the purpose of telephonic communication throughout the city of Richmond, on the public streets thereof, on such routes as might be specified and agreed upon by resolutions of the committee on streets from time to time, and upon the conditions and under provisions of such ordinance.

It is also alleged that the city of Richmond, on the 14th of December, 1894, passed an ordinance, which provided "that the ordinance, approved June 26th, 1884, granting the right of way throughout the city to the Southern Bell Telephone and Telegraph Company, be and the same is hereby repealed;" that, by the 5th section of said ordinance of December 14th, 1894, all the privileges and rights granted by the ordinance of June 26, 1884, *was* to cease at the expiration of twelve months from the approval of said repealing ordinance.

Other allegations in the bill set forth, it will not be necessary to consider in disposing of the question now before me.

The defendant insists that the act of Congress, before mentioned, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes," does not apply to the complainant; and that, therefore, the claim made in the bill that the complainant is entitled to the rights and benefits secured thereby is without merit. The insistance is that the complainant is a telephone company, and that said act of Congress only embraces telegraph companies.

A number of courts, the decisions of which are worthy of our

serious consideration, if not binding authority upon us, have held that a telephone company is a telegraph company, and that a company authorized to construct and operate telegraphs was empowered to establish a telephone service.

On this question, see *Attorney General vs. Telephone Co.*, 6 Q. B. Div., 244; *Telephone Company vs. City of Oshkosh*, 62 Wis., 3; 21 N. W. Rep., 828; *Cumberland Telephone & Telegraph Co. vs.*
38 *United Electric Railway Co.*, 42 Fed., 273; *Duke vs. Central New Jersey Telephone Company*, 53 New Jersey Law Reports, 341; *Chesapeake & Potomac Telegraph Co. vs. Baltimore & Ohio Telegraph Co.*, 66 Md., 410. In this case this contention is confidently made by counsel for complainant, and vigorously denied by the attorney for the city of Richmond. I do not find it necessary now to decide it, for the reason that, in my judgment, the statements set out in the bill, and admitted by the demurrer to be true, show that the complainant is both a telephone and telegraph company, and clearly entitled, if the proper action relating thereto has been taken, to claim the benefits and protection given by said act of Congress. It is distinctly charged, not only that the complainant is a telephone company, engaged in such business in a number of the States of the Union, but, also, that it is a telegraph company, chartered as such, under the general laws of the State of New York. That being so, then the provisions of the act of Congress mentioned are applicable, and whatever action may be found proper hereafter, when all the facts are before the court, I hold that, so far as the demurrer is concerned, *that* this insistance of the defendant is without merit.

The defendant also claimed, in its written demurrer filed in this cause, that if said act of Congress was intended to give to a telegraph company the right to erect poles and run wires along the streets of the city of Richmond, without the consent of said city, that such legislation was unconstitutional and void. This position was abandoned in the argument, and it was conceded that such act was constitutional; that all streets of the city of Richmond, which are letter-carrier routes, are post-roads within the meaning of said act, and that under the same a telegraph company can obtain a right of way for its poles and wires through and along the streets of a city without the consent of a municipality. These admissions are based on the decisions of the Supreme Court of the United States. *Pensacola Tel. Co. vs. Western Union Tel. Co.*, 96 U. S., 1; *Telegraph Co. vs. Texas*, 105 U. S., 460; *Western Union Tel. Co. vs. Massachusetts*, 125 U. S., 530; *St. Louis vs. Western Union Tel. Co.*, 148 U. S., 92, and 149 U. S., 465.

I think it is plain that the complainant, under the allegations in the bill contained, is a corporation entitled to exercise all the functions granted to telegraph companies under the laws of the State of New York, and that under the act of Congress referred to it has the privilege of running its lines through and over the streets of the city of Richmond that are post-roads of the United States, and that said city has no lawful right to prevent it from so doing

39 While it is true that telegraph companies, claiming the right under the laws of the United States to enter the terri-

tory of a State and erect its poles and lines therein, must pay their due proportion of taxes and submit to the ordinary and reasonable regulations of the State and municipal authorities, whose highways they use and whose protection they claim and receive, still it is also true that neither the State nor the municipal authorities can prohibit them from entering their respective jurisdictions, nor require them to remove therefrom after they have established their lines.

Such companies must submit to proper and reasonable local regulations, but they will not be expected to acquiesce in a city ordinance not intended to regulate its management, but passed for the purpose of destroying its existence.

I think the bill alleges such facts as show the complainant to be engaged in interstate commerce, and I find that the claim of defendant that the business of the complainant company is purely local in character is not sustained. The case made by the pleadings is, as I have indicated; what the result may be when the evidence is in, is yet to be found.

The defendant also insists that if the complainant erected its poles and lines under the authority of the ordinance of the city of Richmond passed June 26, 1884, that it cannot afterwards, by accepting the provision of the act of Congress of July 24, 1866 (14 Stat., 221; Rev. Stat., sec. 5263 *et seq.*), thereby render of no effect the stipulations contained in said city ordinance. To what extent the complainant is bound by the terms of the ordinance of June 26th, 1884, it is not now necessary to determine, but that it is protected by the act of Congress referred to—by virtue of its acceptance of the restrictions and obligations of the same, which was filed with the Postmaster General of the United States on the 13th day of February, 1889—and that it may rely upon it for the purpose of preventing its poles and lines from being removed, and its property destroyed is, I think, under the circumstances set forth in this bill, so clear that there is not room for doubt.

Said act of Congress was intended to apply to telegraph companies in existence at the time it was passed, as well as those that might be organized thereafter, provided such companies accepted the terms of same in manner before mentioned. If such companies had been organized under State laws, and had been transacting business under the provisions of municipal ordinances, and then subsequently accepted the terms of said act of Congress, it follows that the State and city laws in so far, at least, as they conflicted with such national legislation, were inoperative and void, and for the reason that they concerned matters over which the Congress had supreme control by virtue of direct constitutional authority.

Holding, as I do, on the questions referred to, it becomes immaterial to further consider the matters raised by the demurrer and discussed by counsel, for the reason that, decide them as I may, still the jurisdiction of the court to hear and determine this case must be maintained.

They can be considered hereafter, if necessary, when they have been more fully presented by answer and testimony. I will pass a

decree overruling the demurrer, and giving the defendant the usual time in which to answer.

The injunction, as prayed for by complainant, will be granted, to remain in force until the further order of this court.

NATHAN GOFF,
U. S. Circuit Judge.

Order Overruling Demurrer and Continuing Injunction.

Entered March 15th, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
vs.
CITY OF RICHMOND. } In Equity.

The defendant's demurrer in this case having been set down for argument and fully argued and submitted to the court on the 14th day of January, 1897, it is adjudged, ordered and decreed, for reasons stated in writing, filed in this cause and made a part of the record, that the said demurrer be, and the same is hereby, overruled. And it is further adjudged and decreed that the injunction and restraining order (dated 6th October, 1896) entered in this cause be, and the same is hereby, continued in force, and the said City of Richmond, its agents, employees and all others be restrained and enjoined, as prayed for in the plaintiff's bill in this case, from cutting, removing, injuring, or in any way interfering with the poles, wires, instruments and business of the plaintiff along and over the routes and streets in said city which are letter-carrier routes for the collection and delivery of mail, from interfering in any way with the proper use, maintenance and repairs of said poles, wires and instruments of said plaintiff, from preventing the said plaintiff
41 from repairing, renewing and maintaining its lines, poles and wires in, along and over the said routes and streets of said city for the purpose of serving existing as well as new subscribers and customers, and from taking proceedings to impose fines or penalties on said plaintiff for using, maintaining and keeping in repair its said lines, poles, wires and instruments until the further order of this court.

And the said defendant has leave, should it desire so to do, to file its answer to the bill of the plaintiff in this case within thirty days.

NATHAN GOFF,
U. S. Circuit Judge.

March 15, 1897.

Answer of Defendant.

Filed March 30, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TEL. & TEL. CO.
vs.
CITY OF RICHMOND.

The answer of the City of Richmond to a bill of complaint of the Southern Bell Telephone and Telegraph Company, in the United States circuit court for the eastern district of Virginia.

This respondent, without waiving its demurrer or the objections to the many errors and imperfections in said bill of complaint, for answer to so much of said bill of complaint as it is advised it is material for it to answer, answers and says:

That the matter in dispute exceeds the value of $20,000.

That this respondent is ignorant as to the powers given to the complainant corporation by its alleged charter, and calls for proof of the same, by the filing of a copy of said charter. It admits that said complainant has, since 1884, been maintaining and operating a telephone exchange in the city of Richmond, Virginia, with its poles erected in, and its wires running over and along certain streets and alleys of the city of Richmond for the transmission of telephonic communication between parties in said city; but it denies that the complainant erected or maintained said exchange, or any of its appurtenances, under or by any authority except by that of the council of the city of Richmond and the legislature of the
42 State of Virginia. This respondent calls for proof that any of the subscribers or patrons of said Richmond exchange are connected through said exchange with the office of the Western Union Telegraph Company. This respondent does not believe, and denies that any agreement has been, or is in force between said complainant and the Western Union Telegraph Company as to the transmission of messages to be sent outside of the State of Virginia, and your orator calls for proof of the same; your respondent also calls for proof as to any person outside of the city of Richmond sending messages to the office of said telegraph company over the wires of said complainant; and your respondent also calls for proof of the agreement as to the joint use of poles, spoken of in said bill of complaint.

Your respondent denies that the sending of messages over the wires of the complainant to be transmitted, subsequently, over the wires of the Western Union Telegraph Company to points outside of the State of Virginia is interstate commerce, and denies that such business is a necessary part of the business of the complainant.

Your respondent does not know and, therefore, does not admit as

to what is the intention of the complainant as to the extension of its business.

Your respondent denies that the wires, poles and lines of the said complainant in and over the said streets and alleys of the said city constitute a part of the postal service of the United States.

Your respondent denies that the business of the complainant is essential to the business of its subscribers for communication with their correspondents outside of the State of Virginia.

This respondent denies that the business and status of the complainant, so far as it concerns its Richmond exchange and its poles and wires on the streets and alleys of the said city, is a telegraph company; and while it may be true, but of that your respondent does not know, not admit, that the complainant was chartered as a telegraph company, it insists that as to its Richmond exchange it is not, and does no business as a telegraph company.

Respondent does not know and does not admit that the complainant ever filed with the Postmaster General of the United States its acceptance of the act of Congress as to the construction of telegraph lines, approved July 24, 1886, and calls for proof thereof. Your respondent denies that even if any such acceptance was ever filed it entitled the complainant, so far as its telephone exchange in the city of Richmond is concerned, to any of the rights and powers authorized by said act.

43 Your respondent insists that the several departments of the Government of the United States, located in the city of Richmond, which used said telephone exchange and electrical conductors only used them as any other subscriber does.

Your respondent insists that the complainant constructed and maintains its lines and poles in the alleys and streets of the city of Richmond not only under the statute of the State of Virginia, but also under the ordinances of the city of Richmond, approved June 26th, 1884, a copy of which was filed with the said bill of complaint and marked "Exhibit K."

Your respondent calls for proof of any contract to furnish telephone facilities to the office-s and agents of the Federal Government.

Your respondent denies that the complainant was ever authorized, so far as its Richmond Telephone Exchange is concerned, by the above-mentioned act of Congress to erect and maintain its poles and wires in and along the streets and alleys of said city of Richmond without its consent. And it denies and calls for proof of its ever having erected any such poles and wires in the said streets and alleys before applying to said city of Richmond so to do.

Your respondent admits having passed the ordinance approved July 18th, 1891, and referred to in said bill of complaint. A copy of said ordinance is herewith filed and marked Exhibit "C. of R. No. 1." Your respondent alleges that it was led to pass said ordinance because of the fact that the poles and wires used for the transmission of electricity in the city of Richmond had become so numerous as to seriously encumber said streets, and that it desired to lessen, as far as possible, the number of poles intended to carry said wires. Your

respondent also alleges that said complainant persistently and determinedly refused to assist this respondent, and declined to accept the provisions of said ordinance.

Your respondent admits that it was advised by its attorney that as long as the complainant held the poles under the said ordinance of June 26th, 1884, it could not be subjected to the terms of said ordinance of July 18th, 1891. And your respondent alleges that it was influenced as much by the said persistent refusal of the complainant to accept the terms of the ordinance of July 18th, 1891, as for any other reason to determine to repeal the said ordinance of June 26th, 1884. But your orator does not know of any threats having been made that the business of the complainant would be ruined. Certain it is that no such threats were authorized by
44 this respondent. It may be true that one of your respondent's committees attempted to induce the complainant to furnish it with certain free 'phones, as alleged in said bill of complaint. But your respondent repeats that no one was authorized by it to make any threats of destroying the complainant's business.

Your respondent admits the passage of the repeal ordinance of Dec. 14th, 1894, a copy of which is filed with said bill of complaint. Your respondent alleges that that ordinance was passed at that time in view of the fact it could not take effect for twelve months after its passage, as provided in said ordinance of June 26th, 1884. And your respondent proposed, through its counsel, before lapse of the twelve months, to pass a general ordinance regulating the use of poles and wires for telephonic purposes; and it did pass two such ordinances, which were approved September 10th, 1895, copies of each are filed with said bill of complaint. Your respondent denies that either of said ordinances imposed upon the said complainant a condition that if it filed a petition, asking to continue the use of its poles and wires, and failed to obtain said permission, that it would have to agree to remove its poles and wires from the said streets and alleys of the city of Richmond.

Your respondent denies the construction put by said bill of complaint upon its power to repeal, reserved by the ordinance of June 26th, 188[illegible], and the effect of its repeal ordinance of December 14th, 1894. Your respondent insists that by said reserved power to repeal it had the right to require, and that by said repeal ordinance it did require, that the complainant should remove from the streets and alleys of the city of Richmond all its poles and wires. Your respondent insists that it had the right to reserve said right of repeal, and that by said repeal it did not destroy any vested right; that no right became vested as against the authority which was reserved to withdraw the right.

Your respondent denies that the acceptance by the said complainant of the provisions of the above-mentioned act of Congress has rendered said complainant independent of, and superior to, the council of the city of Richmond as to the poles and wires erected under said ordinance of June 26th, 1884.

Your respondent insists that, even if the complainant be, as to its Richmond exchange, a telegraph company; yet, that having erected

its poles and wires under the contract contained in the ordinance of June 26th, 1884, it holds such privileges and rights, not by reason of said act of Congress, but under and by virtue of the terms of said contract. But your respondent denies that telephone companies and their business are embraced in said act, and also denies
45 that telephone and telegraph companies are, for the purposes embraced in this act, one and the same. And your respondent insists that the said complainant can only occupy the streets and alleys of the city of Richmond under and by consent of the legislature of the State of Virginia and the council of the city of Richmond.

Your respondent admits that it has allowed the Richmond Standard Telephone Company to erect its poles and wires; but it denies that your respondent's alleged action in requiring said complainant to remove from said streets and alleys was not on account of the interference by its poles and wires with full and proper use of said streets.

Your respondent alleges the Richmond Standard Telegraph Company has accepted the terms of the ordinance above referred to as approved September 10th, 1895; the terms of which were rejected as aforesaid by the complainant; that had the complainant accepted said terms, the poles of the Richmond Standard Company would not have been erected, but the latter company, had it still desired to enter said city, would have been required, under the terms of the last-mentioned ordinance, to have placed its wires upon the poles of the complainant. And your respondent insists that the complainant, having refused the terms of the said last-mentioned ordinances, and the said Richmond Standard Telephone Company having erected its poles mentioned in said bill of complaint, the complainant must, when it runs its wire- in the city of Richmond, place them upon the poles of the Richmond Standard Telephone Company, unless otherwise authorized by your respondent.

Your respondent alleges that it has done nothing to justify the complainant to fear that it intended to cut down its poles. It has expressed no such intention, and given no such order to any of its officers. By one of its said ordinances of September 10th, 1895, filed as Exhibit "H," with said bill of complaint, your respondent has specified the method it proposes to pursue to free its streets of the poles of the complainant or of any one else which shall be thereon without consent of your respondent's council and unlawfully, and that method is to summon the offender before one of its courts of lawful jurisdiction, and, if found guilty of so unlawfully encumbering its streets, to impose a fine. By that course of proceedure the complainant would have had full opportunity to have tested its rights under the ordinance of June 26th, 1884, through the different courts of the State of Virginia.

Your respondent denies that any of the above-mentioned ordinances were intended as a threat or menace to the rights and
46 privileges of the complainant, except so far as expressed upon their faces, and denies that they have ever intended to deter any persons from making contracts with the complainant for

the use of its 'phones, except so far as naturally results from the requirements contained in said ordinances.

And now, having fully answered, this respondent prays that the injunction heretofore granted in this case may be dissolved, and that this respondent may be dismissed with its costs in this behalf expended.

CITY OF RICHMOND,
By RICH'D M. TAYLOR, *Mayor.*

C. V. MEREDITH,
Counsel for City.

STATE OF VIRGINIA,
City of Richmond, } *To wit:*

I, Ewd. J. Warren, a notary public in and for the city aforesaid, do hereby certify that Richard M. Taylor, mayor of the city of Richmond, this day personally appeared before me in my said city and made oath that the statements contained in the foregoing answer, so far as based upon his own knowledge, are true, and so far as based — information derived from others, he believes them to be true, and that the seal attached is the seal of the city of Richmond.

Given under my hand this 29th day of March, 1897.

EWD. J. WARREN, *N. P.*

"EXHIBIT C. OF R. NO. 1."

An Ordinance

As to the joint use of poles erected in the streets and alleys of the city of Richmond for the support of wires used in connection with the transmission of electricity.

(Approved July 18, 1891.)

Be it ordained by the council of the city of Richmond—

1. That all poles now erected in the streets or alleys of the city of Richmond for the support of wires used in connection with the transmission of electricity, shall hereafter be allowed to remain only upon the terms and conditions hereinafter set forth.

47 2. The committee on streets may hereafter require any person or company owning any of such poles to allow any other person or company to place upon its poles, and in such positions, any telegraph, telephone, electric light, electric power, electric car wires, or other wires used in connection with the transmission of electricity, now belonging or that may hereafter belong to any person or company, as the said committee, may from time to time deem proper, upon such terms and conditions as may be agreed upon by said owner and any person or company desiring to use such poles; and in the event that said owner and the person or company desiring to use said poles cannot agree upon satisfactory terms and conditions, the same shall be settled by three disinterested

persons, one to be selected by such owner, one by the person or company desiring to use said poles, and the third by the two persons so selected; and the terms and conditions, which shall be fixed and determined by said persons, or a majority of them, shall be the terms and conditions upon which said company or companies, respectively, shall use and occupy said poles. If the said owner shall, for thirty days after having been requested in writing to appoint its representatives, fail to make such appointment, then the city engineer shall make such appointment, and the person so appointed shall have the powers he would have had if he had been appointed by the said company. If the two arbitrators selected in either of the two manners above specified, shall fail for thirty days after their appointment to select the third arbitrator, then the city engineer shall select such third arbitrator, and when so selected, he shall have the same powers he would have had if he had been appointed by the said two arbitrators. Or, if after the three arbitrators shall have been appointed in any of the modes above specified, they shall fail to settle and determine said terms and conditions within thirty days from the date of the appointment of said third arbitrator, then the city engineer shall have power to select a person who shall have power to settle and determine said terms and conditions. Should either the said owner or any person or company that may, under this section, enter upon and use the poles of the said owner, fail to keep and perform each and every one of the terms as to the use of the said poles, the company so failing shall be liable to a fine of not less than ten nor more than one hundred dollars for such failure; each failure to be a separate offence. The said committee shall have power to require the said owner to allow any person or company desiring to enter upon and use said poles, to so enter and use
48 the same, under such conditions as the city engineer may prescribe, as soon as the said person or company so desiring to enter shall have appointed its arbitrators; but the person or company so entering shall do so with the understanding that he or it will abide by and conform to the terms and conditions determined upon by the arbitrators, as soon as such decision shall be announced. And the said committee shall have power also to require, from time to time, the said owner or any other person or company using said poles to afford and furnish such protection or protections to all wires on such poles as the said committee may deem proper or necessary, in order to allow such wires to perform the purposes of functions for which they were intended. All work as to placing of wires now upon the poles of any other company, shall be done at the cost and expense of the party desiring to use such poles. For any failure to perform any requirement ordered under this section, within ten days after being notified of such requirement by the city engineer, each party so in default shall be liable to a fine of not less than ten nor more than one hundred dollars, each day's failure to be a separate offence.

3. Hereafter no pole shall be erected, nor any wire or other apparatus used in connection with the transmission of electricity, be placed in position in any street or alley of said city, until the city

engineer shall have first determined upon the size, quality, character, number, location, condition, appearance, and manner of erection of such poles, wires or other apparatus. Whenever, at any time, the said poles, wires or other apparatus shall, in the opinion of the city engineer, need changing in size or location, replacing, repairing, being made safe and secure, or being put in proper and suitable condition and appearance, such one of the persons so using the same—if there be more than one, as shall be selected by the city engineer—shall immediately proceed to do such changing as to size and location, replacing, repairing, making safe and secure, or putting into proper and suitable condition and appearance, as the said engineer shall designate, in writing, and all damage done to any street, by the erection of any pole shall, from time to time, be rectified and repaired as required by the city engineer. All expenses arising from any materials furnished or work done under this section, shall be borne in such proportions, by all persons using such poles, wires or other apparatus, as the city engineer may deem fair, unless the parties can agree upon satisfactory terms within ten days from the time such changes or repairs shall have been completed.

49 4. No person or company shall use the poles, wires or other apparatus above referred to of any other person or company until he or it shall have filed with the city engineer a written application fully set- forth what poles, wires or other apparatus he or it shall desire to use, nor until receiving from said engineer a written permission to so use the same in accordance with the provisions of this ordinance.

5. The city council hereby reserves the right to put at any time other restrictions and regulations as to the erection and use of said poles, wires and other apparatus used in connection with the transmission of electricity.

6. The city engineer may require from time to time the owner of any wires such grouping and cabling as he may deem necessary and proper.

7. The officials of the Richmond fire department and fire-alarm and police telegraph department are to have the power to cut any wire of said company whenever deemed necessary for the protection of the city's interest. And the said department shall have the right to use any such poles, whenever or wherever deemed desirable for wires for said departments, free of charge.

8. Nothing in this ordinance is intended to relieve any person or company of any condition, restriction or requirement imposed upon said person or company by the ordinance under which it has been authorized to place in said streets or alleys any poles, wires, or other apparatus for the transmission of electricity.

9. Each and every provision of this ordinance shall apply to any pole, wire, or other apparatus used in connection with the transmission of electricity hereafter erected in said streets or alleys, whether the same be erected by way of repairs or for any other purpose.

10. Any person or company violating any restriction, provision,

or condition imposed by this ordinance, or failing to perform any requirement made by the city engineer under this ordinance, shall be liable to a fine of not less than ten nor more than one hundred dollars, to be imposed by the police justice of said city; each day's violation or failure to be a separate offence.

This ordinance shall be in force from its passage.

50 *Replication.*

Filed May rules, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, a Corporation Duly Incorporated, Organized, and Existing under the Laws of the State of New York, Plaintiff,

vs.

CITY OF RICHMOND, a Municipal Corporation Incorporated and Existing under the Laws of the State of Virginia, Defendant.

} In Equity.

The replication of The Southern Bell Telephone and Telegraph Company, complainant, to the answer of The City of Richmond, defendant.

This repliant, saving and reserving unto itself now, and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that it will aver, maintain and prove its said bill of complaint to be true, certain and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue and insufficient to be replied unto by this repliant. Without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

SOUTHERN BELL TELEPHONE AND TELEGRAPH CO.,
By LEAKE & CARTER,
STILES & HOLLADAY, *Its Solicitors.*

51 *Statement as to Evidence.*

It is agreed between the parties to this controversy by and through their respective counsel that instead of taking depositions and introducing witnesses to prove or identify different papers, written

statements of what the witnesses would testify to, will be received as evidence and the papers will be regarded as introduced without such identification.

1st. The paper marked "Bell Ex. No. 1," is a copy of the charter of incorporation of the complainant by which it was duly chartered as therein stated.

2nd. The paper marked "Bell Ex. No. 2," is a copy of the minutes of the meeting at which the complainant was organized.

3rd. The papers marked "Bell Ex. No. 3," *is* a copy of the acceptance by the complainant of the terms of the act of Congress, approved July 24th, 1866, as to the construction of telegraph lines, filed February 18th, 1889, and certificate.

4th. That the pamphlet marked "Bell Ex. 4," beginning on page 22 thereof and continuing through said pamphlet, is a correct copy of a contract entered into on the 10th day of November, 1879, between the Western Union Telegraph Company, acting for itself and others, of the first part, and the National Bell Telephone Company, which afterwards became or was merged into the American Bell Telephone Company of the second part.

5th. The paper marked "Bell Ex. No. 5," is a contract entered into September 1st, 1888, between the said American Bell Telephone Company and the Southern Bell Telephone and Telegraph Company.

6th. The paper marked "Bell Ex. No. 6," is a copy of an agreement between the Western Union Telegraph Company, acting for itself and others, of the first part, the American Bell Telephone Company, of the second part, and the Southern Bell Telephone and Telegraph Company of the third part.

7th. The paper marked "Bell Ex. No. 7," is a pole license from the Western Union Telegraph Company to the complainant to use certain of its poles upon the terms therein set forth. The complainant showed to the counsel for the city other such licenses or contracts for certain poles in Henrico county on the York River
52 railroad, and for certain poles from Richmond to Bon Air, in Chesterfield county, Va. But it is *agree-* that the other contracts need not be filed.

8th. The paper marked "Bell Ex. No. 8," is a list of the places outside of Richmond and not in Henrico county, in which Richmond is situated, connected by telephone through the main office of the complainant in Richmond with the Richmond office of the Western Union Telegraph Company.

9th. The paper marked "Bell Ex. No. 9," is a letter from vice-president of the Western Union Telegraph Company to the American Bell Telephone Company. Accompanying said letter and attached to it is a receipt from said telegraph company to the said American Bell Tel. Co. as to certain instruments for telephonic purposes. The complainant showed to the counsel for the city other such receipts, dated April 21st, 1887, March 23, 1895, and Nov. 3, 1896 (all of which instruments mentioned in said receipts were and are used as agreed), but it is agreed between the parties that the other receipts need not be filed.

10th. The paper marked "Bell Ex. No. 10," is a statement of amounts received by complainant from Western Union for telegrams received and delivered by telephone at Richmond, Va., to and from the said telegraph company since January 1st, 1894.

11th. The paper marked "Bell Ex. No. 11," is a newspaper statement, substantially correct, as to what took place at a meeting of the committee on streets on the — day of Sep., 1896.

12th. The paper marked "Bell Ex. No. 12," is an affidavit from R. B. Rood, which is to be treated as if it were his deposition. Affidavit includes statements on both sides of the paper.

13th. The paper marked "Bill Ex. No. 13," is a statement from C. E. McClure, supt. So. Bell Telephone and Telegraph Co., which is to be treated as if it were his deposition.

14th. The paper marked "Bell Ex. No. 14," is a statement of the number of subscribers of the complainant outside of the city of Richmond, but in Virginia, connected with the main office in said city, and through the same with other 'phones in said city of the complainant.

The paper marked "Bell Ex. No. 15," is a statement from Mr. J. B. Tree, supt. of Wes. Union Tel. Co. in Richmond Va.,
53 which is to be treated as if it were his deposition.

15th. The paper marked "C. of R. Ex. No. 1," is the ordinance mentioned in the bill of complaint as passed and approved July 18, 1891. (See Ex. of R. No. 1, filed with answer.)

16th. The paper marked "Ex. C. of R. No. 2," is an affidavit by W. H. Thompson, supt. city fire alarm of Richmond, and is to be treated as if it were his deposition.

17th. The paper marked "Ex. C. of R. No. 3," is a correct copy of the minutes of the committee on streets as to how the two ordinances, filed with the bill of complaint as Exhibits "G" and "H," *was* ordered to be drawn by the city engineer and city attorney.

18th. The patents used by the plaintiff company are the patents referred to in the "Telephone cases," 126 U. S. Reports, and describe the method of communication therein patented, as set out in the drawings and specifications of said patents as shown. Copies of which, as set forth in said 126 U. S. Rep., from page 4 to 23, inclusive, are to be considered evidence in this case, and may be read and referred to by either party to this cause in any court to which this case may go, but are not to be copied as a part of the record, unless required by the court.

The charter of the respondent city is found in the act of assembly of Virginia, approved May 24th, 1870. The charter, among other provisions therein, contains the following:

"SECTION 19. The city council shall likewise have the power to make such ordinances, by-laws, orders and regulations as they may deem desirable to carry out the following powers, which are hereby vested in them."

Subdivision 7th. "To close or extend, widen or narrow, lay out and graduate, pave and otherwise improve streets and public alleys in the city. * * * They may prevent or remove any structure, obstruction or encroachment over or under or in a street or alley, or

any sidewalk thereof; and no company shall occupy with its works the streets of the city without the consent of the council."

Subdivision 8th. "To prevent the encumbering of streets, avenues, walks, public squares, lanes, alleys or bridges in any manner whatever."

54 Subdivision section 17. "To require and compel the abatement and removal of all nuisances within said city, at the expense of the person or persons causing the same."

It is agreed that the entire city charter shall be regarded as in evidence for the purpose of argument before any court to which this cause shall go, but in case of an appeal is not to be copied in the record.

It is also agreed that in case of an appeal the two papers, "Bill Ex. No. 4" and "Bill Ex. No. 5," are not to be copied in full into the record, but only such portions as each side instruct the clerk it will desire to be inserted.

The undersigned states that he is the city attorney of Richmond, and has held that office for several years; that the committee on streets of the city council of Richmond is simply a committee of certain members of the two branches of the city council with no legislative power, and with no power to take any action to remove any poles or wires of the complainant from any street in said city of Richmond without instruction and authority from the city council, that no such instruction or authority was ever given. In effect the powers of the committee, except where authorized by the council, are merely to inquire into and to recommend action by the city council. The undersigned further states that neither W. H. Thompson, superintendent of the Richmond City fire alarm, nor Col. Cutshaw, city engineer, had any authority to bind the city, nor to speak for the city council as to any action it might take in regard to the matters mentioned in the statements of Mess. Rood, manager, and McCluer, superintendent, filed in this cause. They were and are merely ministerial officers in their respective departments.

C. V. MEREDITH.

July 17th, 1897.

The above, it is agreed, is to be treated as if it were the deposition of the said C. V. Meredith.

COMPLAINANT,
By STILES & HOLLADAY,
LEAKE & CARTER.
CITY OF RICHMOND,
By C. V. MEREDITH.

55 "BELL EXHIBIT NO. 1."

Certificate of Association of the Southern Bell Telephone and Telegraph Company.

Know all men by these presents that we, the undersigned, do hereby associate ourselves together, under and by virtue of an act

of the legislature of the State of New York, entitled "An act to provide for the incorporation and regulation of telegraph companies," passed April 12th, 1848, and the various acts amendatory thereof, for the purpose of owning or constructing, using and maintaining a line or lines of electric telegraph, partly within and partly beyond the limits of the State of New York, or for the purpose of owning some interest in such line or lines and such grants as may be obtained therefor, and do hereby certify as follows:

I. The name assumed to distinguish this association, and by which it may sue and be sued, is the Southern Bell Telephone and Telegraph Company.

II. The general route of the line or lines of telegraph of this association, and the points to be connected therewith, shall be as follows: From the office of the association, at number 197 Broadway, or elsewhere, in the city of New York, by some convenient route through or across the States of New Jersey, Pennsylvania, Delaware, Maryland and Virginia, or otherwise to the city of Wheeling or some other convenient point in the State of West Virginia, and thence to and between and throughout various cities, towns, points and places within that part of the State of West Virginia lying south of the Baltimore and Ohio railroad, and within the States of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, the said line or lines to connect the said cities of New York and Wheeling together, and the said other cities, towns, points and places, or some of them, or points within the same, together or with each other or with said cities of New York and Wheeling.

III. The capital stock of this association shall be one million dollars, divided into ten thousand shares of the par value of one hundred dollars each.

IV. The names and place of residence of the stockholders of this association, and the number of shares held by each of them, respectively, are as follows:

56 Names.	Place of residence.	No. of shares.
Hamilton McK. Twombly	New York, N. Y.	2,500
De Lancey H. Louderback	" "	1,250
Anson Stager	Chicago, Ill.	2,500
James M. Ormes	Richmond, Va.	3,750

This association shall commence on this 11th day of December, 1879, and terminate on the eleventh day of December, 1929.

Witness our hands and seals this 11th day of December, 1879.

(Signed) H. McK. TWOMBLY. [s.]
(Signed) DELANCEY H. LOUDERBACK. [s.]
(Signed) ANSON STAGER. [s.]
(Signed) JAMES M. ORMES. [s.]

STATE OF NEW YORK, }
City and County of New York, } ss:

On this eleventh day of December, in the year 1879, before me personally came Hamilton McK. Twombly, De Lancey H. Louder-

back and James M. Ormes, to me known to be the individuals described in, and who executed the foregoing instrument, and severally acknowledged that they executed the same for the purposes therein mentioned.

(Signed) WM. ARNOUX,
[SEAL.] *Notary Public, Kings and N. Y. Counties.*

STATE OF ILLINOIS, }
County of Cook, City of Chicago, } ss:

I, Philip A. Hayne, a commissioner for the State of New York, residing in Chicago, in the county of Cook and State of Illinois, do hereby certify that on the fifteenth day of December, one thousand eight hundred and seventy-nine, personally appeared before me in said city, county and State, Anson Stager, to me known to be the same person described in, and who executed instrument of writing and acknowledged the same to be his free act and deed.

In testimony whereof I have hereunto set my name and affixed my official seal at Chicago in said State and county this fifteenth day of December, one thousand eight hundred and seventy-nine.

(Signed) PHILIP A. HAYNE,
[SEAL.] *Commissioner for New York in Chicago, Illinois.*

57 STATE OF NEW YORK, }
City and County of New York, } ss:

I, Hubert O. Thompson, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify, that I have compared the preceding with the original certificate of association, together with the acknowledgments thereto annexed, on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

Endorsed, filed and recorded 17 Dec., 1879, 3h. 50.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 17th day of December, 1879.

[SEAL.] HUBERT O. THOMPSON, *Clerk.*

(Endorsed:) Certificate of association of the Southern Bell Telephone and Telegraph Company. Filed December 20, 1879. Geo. Moss, deputy secretary of state.

STATE OF NEW YORK, }
Office of the Secretary of State, } ss:

I have compared the preceding with the certified copy certificate of incorporation of Southern Bell Telephone and Telegraph Company filed in this office on the twentieth day of December, 1879, and do hereby certify the same to be a correct transcript therefrom and of the whole thereof.

State of New York, Secretary of State.

Witness my hand and the seal of office of the secretary of state, at the city of Albany, this fourteenth day of December, one thousand eight hundred and ninety-five.

ANDREW DAVIDSON,
Deputy Secretary of State.

58 "BELL EXHIBIT No. 2."

Minutes of the Southern Bell Telephone and Telegraph Comp'y.

Minutes of meeting of the incorporators of the Southern Bell Telephone and Telegraph Company, held in the office of the Western Union Telegraph Company, on Thursday, January 15, 1880, for the purpose of organizing the company.

Present: Messrs. Anson Stager, Hamilton McK. Twombly, Delancy H. Louderback, and James M. Ormes, all of said incorporators.

On motion, it was resolved, that Anson Stager be appointed chairman of this meeting, and Clarence Cary secretary *pro tem.*

The proposed by-laws of the company, consisting of 8 articles, were read, unanimously adopted, and approved, as follows, viz:

* * * * * * *
* * * * * * *

The secretary was appointed to cast the ballot for the election of directors to serve for the ensuing year.

The ballot being cast, the following gentlemen were declared to be elected directors, viz:

Norvin Green,
Samuel F. Barger,
Jno. Van Horne,
George W. Trabue,
James M. Ormes,
E. W. Cole,
P. R. Bridges,
Williams C. Wickham,
Anson Stager,
Augustus Schell,
Hamilton McK. Twombly,
Delancey H. Lauderback,
Henry B. Plant,
John B. Whitehead,
E. P. Alexander.

On motion adjourned.

(Signed) CLARENCE CARY,
Secretary pro Tem.

Minutes of meeting of the board of directors of the Southern Bell Telephone & Telegraph Comp'y, held in the office of the company, at 197 Broadway, New York, the 21 day of January, 1880.

Present: Messrs. Stager, Twombly, Barger, Ormes, Louderback, Trabue, Plant, Alexander, and Schell.

Mr. Schell was appointed chairman of the meeting.

The by-laws adopted at the meeting of incorporators, held 15th inst., were read and unanimously adopted.

59 The minutes of meeting of the board held on 17 instant, were read and approved.

The meeting then proceeded to elect, by ballot, a president and vice-president, and Mr. Twombly was unanimously appointed teller to cast the vote.

The vote being cast Mr. Twombly announced the same, as follows:

For Anson Stager, as president, 8 votes.
" H. B. Plant, as vice-president, 9 votes.

The chairman therefore declared that Anson Stager was duly elected president, and H. B. Plant vice-president.

Mr. Schell thereupon resigned the chair in favor of President Stager.

It was unanimously—

Resolved, That Mr. D. I. Carson be appointed secretary.

It was unanimously—

Resolved, That Mr. R. H. Rochester be appointed treasurer.

The following directors were unanimously appointed to act as an executive committee, in accordance with the by-laws of the company, viz:

Norvin Green, Samuel F. Barger,
James M. Ormes, G. W. Trabue.
H. McK. Twombly.

* * * * * * *

On motion, adjourned.

(Signed) CLARENCE CARY,
Sec'y pro Tem.

" BELL EXHIBIT NO. 3."

POST-OFFICE DEPARTMENT,
WASHINGTON, D. C., *Feb'y 18th*, 1889.

I, Don M. Dickinson, Postmaster General of the United States of America, certify that the annexed is a true copy of the original acceptance on file in this department.

Post Office Department, United States of America.

In testimony whereof I have hereto set my hand and caused the seal of the Post-office Department to be affixed, at the city of Washington, the day and year above written.

DON M. DICKINSON,
Postmaster General.

60 To all whom it may concern:

Be it known that the Southern Bell Telephone and Telegraph Company, a corporate body organized under the laws of the State of New York, through its duly authorized officers, whose signatures are hereunto attached, does hereby accept, without reservation, all of the restrictions and obligations of the act of Congress approved July 24, 1866, entitled "An act to aid in the construction of telegraph lines, and to secure to the Government the use of the same for postal, military and other purposes." And the said company does especially agree that telegrams between the several departments of the Government and their officers and agents shall at all times have priority over all other business in their transmission over

the lines of said company, and that the charges for such telegrams shall not exceed the rates annually fixed by the Postmaster General.

This declaration of acceptance is made in order that said Southern Bell Telephone and Telegraph Company may be entitled to the rights and privileges granted by the act of Congress aforesaid.

Done at New York city this thirteenth day of February, 1889.

[Seal Southern Bell Telephone and Telegraph Co.]

SOUTHERN BELL TELEPHONE
& TELEGRAPH CO.,
By JOHN VAN HORNE, *President.*
D. J. CARSON, *Secretary.*

"BELL EXHIBIT No. 4."

Contract of November 10th, A. D. 1879.

This agreement, made this 10th day of November, 1879, by and between the Western Union Telegraph Company, for itself and for the Gold and Stock Telegraph Company, American Speaking Telephone Company, and Harmonic Telegraph Company, which it represents, party of the first part, and the National Bell Telephone Company, party of the second part, witnesseth:

Article 1. (1.) The party of the second part shall pay to the party of the first part, upon all telephones used in the United States, under any license from the party of the second part, express or implied, unless expressly excepted, a royalty or bonus of twenty per cent. of all rentals or royalties actually received or rated as paid in accordance with the provisions of this contract, from licenses
61 or leases for speaking telephones (exclusive of call-bells, batteries, wires, and other appliances, or services furnished or performed). The rentals or royalties upon which said royalty or bonus to be paid to the party of the first part is to be reckoned, shall, for that purpose, be ascertained by deducting from the gross rental or royalty received or rated as hereinafter declared, the commissions and allowances herein provided for.

Article 2. * * *

(1.) The word "telephone," as used in this contract, refers to an instrument for electrically transmitting or receiving articulate speech, and is understood to mean either a transmitting instrument, incapable of use as a receiver, a receiving instrument incapable of use as a transmitter, or an instrument capable of being used both as a transmitter and receiver.

Article 6. Except as herein provided, the first party and the companies it represents agree to withdraw from the manufacture, rental and use of telephones.

Article 7. The party of the first part agrees to give assistance and co-operation in developing and extending the use of the telephones of the party of the second party and that the party of the

second part shall, during the term of this contract, and when in the judgment of the first party it shall not interfere with the enjoyment of the same by said first party for telegraphic purposes, have permission to build lines under any franchises, contracts, licenses or rights of way enjoyed or controlled by the party of the first part, or to use any poles, fixtures, structures, or plant of said first party, upon reasonable terms, subject, however, to a revocation of such license to use any poles, structures, fixtures, or plant, at any time, by reasonable notice to the party of the second part.

Article 12. * * *

(2.) For the purpose of this contract it is agreed that an "exchange," or "a district or exchange system" applies to a system in which different stations on the same or different circuit, and either within any city or town, or within a radius of fifteen miles of a central office (or within wider limits, where existing contracts have granted wider limits), are connected with such central office or branch offices within said territory for the purpose of placing subscribers or other parties by such circuits in communication with such central or branch offices, or with each other, either directly or through the agents of the system.

62 Article 13. (1.) The right to connect telephonic district or exchange systems for the purpose of personal conversation between persons at the instruments, and the right to use telephones on all lines not forming a part of a telephonic district or exchange system for such personal conversation (except so far as licenses for private lines are to be granted to the party of the first part under article 14) are to remain exclusively with the party of the second part, and those licensed by it for the purpose.

But such connecting and other lines are not to be used for the transmission of general business messages, market quotations, or news for sale or publication in competition with the business of the Western Union Telegraph Company, or with that of the Gold and Stock Telegraph Company; and the party of the second part, so far as it lawfully and properly can prevent it, will not permit the transmission of such general business messages, market quotations or news for sale or publication over lines owned by it, or by corporations in which it owns a controlling interest, nor license the use of its telephones or patents for the transmission of such general business messages, market quotations or news for sale or publication in competition with such telegraph business of the Western Union Telegraph Company or that of the Gold and Stock Telegraph Company.

(2.) The terms "general business messages" and "telegraph messages," or "messages for hire," are defined to mean all communications in behalf of other parties than those who directly communicate by the telephone by themselves or their servants or agents personally present at the instrument; and no person engaged in the business of transmitting messages for other parties shall be authorized or knowingly allowed by the party of the second part, or its servants or agents, to transmit such messages through the telephone.

Article 14. (1.) The party of the second part will fully license the party of the first part to use telephones procured from it for transmitting telegraphic messages, and for use on private lines, with the right to sublet the use thereof along with such private lines, for such purposes as such private lines have been and are being used, except in territories where exclusive agency contracts inconsistent with this agreement to license already exist, and during the continuance of such agencies, in which cases they may obtain them from such agents.

(2.) For the purposes and uses aforesaid, the party of the
63 first part shall be furnished with telephones, with licenses from the party of the second part to use such telephones and other inventions owned or controlled by it for use in connection with telephone lines, on terms which may be established from time to time, and which shall be as favorable as those on which they are furnished to any other parties for like uses, and shall be allowed a discount as provided in article 2.

Article 15. (1.) The second party will turn over and deliver to the Western Union Telegraph Company of the first part, or its agents, exclusively, all messages for transmission to other points by telegraph, collected by or coming on the wires or within the control of its telephonic exchanges or district systems or those of its licensees, wherever the first party has wires and is prepared to receive or transmit the same, so far as said second party can lawfully control the same, and unless otherwise specially directed by its customer-; but will not solicit such special direction nor receive and pay tolls for transmission over other lines, unless compellable by law so to do. And the first party shall forward the same to destination, subject to its established rules and regulations, upon payment of regular tolls, and pay to said second party a commission of fifteen per cent. on all the tolls received for transmitting such messages over its lines; the commission not to include tolls for the transmission over other lines, nor tolls for transmitting cable messages. For delivery service of telegraphic messages made through said second party or its license-s and for collecting through a messenger service for delivery to said telegraph company, the party of the first part will pair a fair compensation, the same that is paid to district telegraph companies for similar services.

(2.) If the second party, for the purpose of doing a general telegraph or telephone business, shall connect a telegraph station of the Western Union Telegraph Company by a branch line with any place in territory occupied or covered by the Western Union Telegraph Company which has no Western Union line or office, it shall turn over and deliver to the Western Union Telegraph Company, exclusively, so far as it has legal power to control the same (unless it be specially directed by the customer sending the same that they be forwarded by some other route), all messages collected from such points so connected. And said Western Union Telegraph Company will, as hereinafter provided, receive and forward the same upon payment of regular tolls, and pay to the second party or its agents

a commission of ten per cent. upon the tolls received for
64 transmitting such messages over the Western Union Telegraph lines (cable messages excepted from such commission); and there shall be added to the rate of tolls to be collected from customers a further rate, not to exceed ten cents per message of ten words on such branch lines of the length of ten miles or less, and five cents additional per message of ten words for each additional ten miles or fraction thereof in length of said branch lines, and at the same rate for longer messages; such tolls so added shall belong to the party of the second part.

(3.) When the second party shall have constructed such branch lines to such new points within the territory occupied or covered by the Western Union Telegraph Company, but not theretofore reached by its telegraph lines, and the telegraph company of the first part shall thereafter elect to construct its lines of telegraph to such new points, it shall, if required by said second party, take and pay for the lines of the second party at cost, and also pay said second party the commission provided in section (2) of this article on all the business taken at such point for the period of twelve months thereafter. But if the party of the second part shall elect to keep its own lines the provisions contained in article 13 against the transmission of general business and other messages shall apply to such line.

(4.) Where any messages are to be delivered between the parties through the telephone, said party of the first part is to afford to the party of the second part, at the expense of the second party, the facilities for providing a telephone connection between its office and the office of the district exchange or branch line, and shall at its own office, without further costs to the party of the second part or its licensees, receive or transmit said messages over said connecting line by its own clerks, who for that purpose shall be the agents of the second party and subject it to its rules and regulations.

(5.) It is also agreed by the party of the first part, for itself and those it represents, that it will not connect its telegraph lines with any telephonic district or exchange system other than those licensed by the party of the second part, so far as it lawfully can refrain from so doing, except in districts and during the time temporarily excepted from the operation of this contract.

(6.) All messages or communications of customers delivered by either of the parties to the other for further transmission over its telegraph or telephone lines, as the case may be, shall be deemed to
65 have been delivered and received subject to such established rules, regulations and conditions of the receiving company as may have been established and promulgated by it for the government of its business and not otherwise; and for the purpose of regulating and limiting the responsibility of the party receiving from the other a message or communication in this manner, it shall be the duty of the company receiving the message directly from the customer to require his assent to such rules, regulations and conditions of the other company by writing his message or communica-

tion upon the regular contract blanks of such company, or blanks containing an equivalent contract, or in such other manner as may be generally required by such company for that purpose from its direct customers; and if either company, dealing with the customer in the first instance, shall fail in the duty last above stipulated, it shall hold the other company harmless from all claims for damage which it may be compelled to pay to the customer because of the absence of a contract arrangement with such customer subjecting the business in question to such established rules, regulations and conditions of the company thus rendered liable to the customer; the object of this stipulation being to limit the responsibility of each party to matters happening upon its own lines; and to secure the regulation of that responsibility in respect to all business originating beyond its own lines, in the same manner as such responsibility shall be regulated in respect to business beginning, continuing and terminating upon its own lines. Whenever any such rules, regulations or conditions shall be established or modified by either party the same shall be notified to the other party.

Article 17. This contract shall go into effect as of the first day of November, 1879, and shall be and remain in force until the expiration of seventeen years thereafter. It shall cover the whole territory of the United States, except that included in the Ormes contract (which territory shall be included in this contract upon the expiration of said Ormes contract), and those conflicting localities hereinbefore referred to and temporarily excepted, and shall cover them as soon as those exceptions expire. Said Ormes contract is a contract dated August 26, 1879, to which James M. Ormes, the Western Union Telegraph Company acting for the same parties as in this contract, and the National Bell Telephone Company are parties; the territory covered by it is as follows: West Virginia south of the Baltimore and Ohio railroad, Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama. For the further contents of said contract, so far as is material, reference thereto is hereby made.

66 Article 19. It is understood and agreed that nothing herein contained shall be construed as imposing upon either party any obligation to do or not to do at any time anything contrary to law; and if anything herein covenanted or contemplated to be done or not to be done shall be or become contrary to the law of the land, the consequent inability and failure to perform the same shall not operate as a dissolution of this contract, nor to give to either party a right of action against the other.

Article 20. All the provisions and stipulations herein contained and described as incumbent on or for the benefit of the parties hereto, shall be incumbent on or for the benefit of their respective successors or assigns.

In witness whereof said Western Union Telegraph Company hath caused these presents to be subscribed by its president and its corporate seal to be hereto affixed by its secretary, and said National Bell Telephone Company hath caused its corporate seal to be hereto

affixed by its clerk and these presents to be subscribed by its president and treasurer on the day first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
By NORVIN GREEN, *Pres't.*

[Seal Western Union Tel. Co.]

Attest: A. R. BREWER, *Sec'y.*

THE NATIONAL BELL TELEPHONE COMPANY,
By W. H. FORBES, *Pres't.*
GEO. L. BRADLEY, *Treas.*

[Seal National Bell Telephone Co.]

Attest: CHAS. EUSTIS HUBBARD, *Clerk.*

"BELL EXHIBIT No. 5."

This agreement made this — day of September, A. D. 1888, by and between the American Bell Telephone Company, a corporation created under the laws of the Commonwealth of Massachusetts, of the first part, and the Southern Bell Telephone and Telegraph Company, a corporation created under the laws of the State of New York, of the second part,

Witnesseth, whereas the second party holds certain license
67 contracts (a schedule of which is hereto annexed, marked "A"), which were issued by said The American Bell Telephone Company or by the National Bell Telephone Company, the predecessor in business of said The American Bell Telephone Company; and

Whereas the second party desires to surrender said several license contracts and to have certain other license contracts, and the first party has agreed to accept such surrender and to enter into such other license contracts, as hereinafter set forth.

Now, therefore, it is agreed as follows:

1. The second party shall surrender and give up to the first party said several license contracts named in Schedule "A," and all and singular the rights of it, said second party thereto, in, to and under the same.

2. The first party agrees that it will accept such surrender, and that it will thereupon enter into the following-described license contracts with the second party; that is to say:

(*a.*) License contract for exchange purposes, form 109 D, hereto annexed, marked "B,"

(*b.*) License contract for extraterritorial connecting lines, form 113 D, hereto annexed, marked "C,"

(*d.*) But the second party shall perform any and all contracts with subscribers made under said license contracts, or any or either of them, so to be surrendered and existing at the time of such surrender, and shall hold all telephones furnished thereunder (schedules of which telephones are hereto annexed, marked "E")

as the property of said The American Bell Telephone Company, each under the license contract for like purposes as that under which it was originally furnished, so to be made with it, said second party, and with like effect as if actually furnished thereunder, except that rental and royalty thereon shall begin at the date of such new license contract.

In witness whereof the parties hereto have caused their respective corporate seals to be affixed hereto and these presents to be signed in duplicate by their respective officers duly authorized.

THE AMERICAN BELL TELEPHONE CO.,

By its general manager, C. J. F.

[Seal American Bell Telephone Co.]

Approved:

JOHN E. HUDSON.

H. STOCKTON, *President.*

68 SOUTHERN BELL TELEPHONE & TELEGRAPH CO.,

By JNO. VAN HORNE, *President.*

[Seal Southern Bell Telephone and Telegraph Co.]

D. J. CARSON, *Secretary.*

Contract for Exchanges.

Form 109 D.

This agreement, made this first day of September, A. D. 1888, by and between the American Bell Telephone Company, a corporation created under the laws of the State of Massachusetts, lessor and licensor, party of the first part, and the Southern Bell Telephone and Telegraph Company, a corporation created under the laws of the State of New York, lessee and licensee, party of the second part, witnesseth:

(1.) Whereas the lessor owns the letters patent of the United States granted to Alexander Graham Bell, March 7, 1876, and January 30, 1877, numbered 174,465, 186,787, respectively, and owns or has the right to use, and may hereafter own or have the right to use, sundry other inventions, which are or may be embodied in electric-speaking telephones, and desires to extend the use of telephones licensed by it in every manner in which the public may wish to use the same, and for that purpose to provide for the construction and use of the apparatus and lines necessary to be used in connection therewith; and whereas the lessee desires to obtain the use of telephones under lease and license from the party of the first part to be used with the lines of telephonic district or exchange systems established and owned by it in the territory hereinafter described under the provisions hereinafter set forth; now it is agreed as follows:

(2.) The rights hereby granted shall be perpetual, unless determined as hereinafter provided, and shall extend to all exchanges

established and owned by the licensee, and wholly within the following-described territory, namely: the State of West Virginia (excepting the counties of Barbour, Brooks, Doddridge, Hancock, Harrison, Marion, Marshall, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and Wood), and the States of Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama.

69 (3.) For the purpose of this contract an "exchange," or "a district or exchange system" means a system in which different stations on the same or different circuits, and either within any city or town, or within a radius of fifteen miles of a central office, are connected with such central office or branch offices for the purpose of placing subscribers or other parties by such circuits in communication with such central or branch offices, or with each other, either directly or through the agents of the system. No office or line of an exchange can be connected with any point outside of its territory, nor with any telegraph company's office or line, except by lines of the licensor or parties specially designated by it for this purpose, nor, except in connection with such lines, can the lines of an exchange be used for performing any part of the work of transmitting messages by telephone to points outside its territory, and no telegraph company, unless specially permitted by the licensor, can be a subscriber or use the system to collect and deliver messages from and to its customers, nor shall any person use the same telephone in connection with different exchange systems.

(4.) The licensor, at its general office or factory, will deliver to the second party, as needed, electric-speaking telephones, made and to be used under its patents, during the existence of the rights hereby granted and as herein set forth and permitted, and all telephones delivered to the second party during the continuance hereof shall be deemed to be furnished hereunder, unless otherwise specially designated by the licensor. They will be of such character and pattern and bear such marks as the lessor shall from time to time determine, but the second party may choose from among such standard patterns. Each of said telephones shall remain the property of the licensor, and is hereby leased, and the use of it licensed under said patents and all others under which the lessor has or may have a right to license, so far as applicable thereto, for the purposes herein declared for the term of one year from the day when rent and royalty begin to accrue on it as provided in article 8, but the due payment thereof to the licensor, and the due performance of the stipulations hereof during said year, by the second party and those using the telephone under it, shall *ipso facto* operate to renew the lease and license for another year, and so on until the expiration or other determination hereof. The second party is hereby licensed to use said telephones for any purpose, upon circuits exclusively composed of the lines of any such exchange system, and to use

70 them in connection with the trunk lines reserved to the licensor by article 9, for the purposes and to the extent therein limited, during the term hereby created, upon condition and so long as the rental therefor shall be duly paid to the licensor and as the

provisions hereof are not violated, but not longer or otherwise; and it may grant said right to its customers by contracts as provided in article 7. The lessor will not license any telephones to be used by others upon an exchange system within said territory while the rights of the second party hereunder exist, except telephones to be used on the lines of exchanges having their central offices outside said territory by persons within said territory who are or may be subscribers to or customers of such exchanges; but the second party shall, by general or special exchanges, supply (so far as it is authorized so to do by this contract) all reasonable demands of the public, and shall be diligent to increase the number of telephones used on its exchanges. All rights not hereby specifically granted remain to the licensor.

(7.) The contract between the second party and those who are to use telephones under it, as herein provided, shall express, in such form as the lessor shall from time to time approve, that the telephone is the property of the licensor; that it is leased and licensed by it only as herein expressed; that all use of it otherwise is an injury to and invasion of the rights of the licensor as owner thereof and of the patent rights used therein and thereby, entitling it to all the remedies herein provided and to an injunction and other legal redress in a suit by it in its name and behalf. The second party shall require every person using said telephones for communications or messages sent or to be sent over other telephone or telegraph lines, to provide for payment of tolls thereon, and to make every such message subject to such stipulations, regulations and conditions respecting the liability of such lines for errors and mistakes as the licensor may from time to time require, and for that purpose will incorporate into its subscription contracts and message blanks such provisions and contracts to be agreed to by the subscriber and customer as the licensor may from time to time approve, and will hold the lessor harmless from all loss and expense consequent upon its failure so to do.

(9.) The licensor may enter the offices and connect with the exchange systems of the second party any lines to points without the territories of such exchanges, respectively, and to telegraph offices, in order to establish communication between customers of the exchanges and telegraph companies or parties reached by said
71 lines, and may there operate said lines with suitable appliances; the second party will permit and encourage its customers to use such lines, and by its own operators will receive and transmit such messages to and from its customers and subscribers, or make the proper switch board or other connections for direct communication, as may be requested, and in such manner, not inconsistent with the proper conduct of its office, as the licensor shall direct. But if the licensor is not satisfied with the manner in which it is performed, it may establish its own offices and trunk and radiating lines for this purpose. The second party will not, without special leave of the licensor, so far as it can lawfully prevent it, permit the transmission over such connecting lines of general business messages, market quotations or news for sale or publication,

nor any communications in behalf of other parties than those who directly communicate by the telephone by themselves or their servants or agents personally present at the instruments, and no person engaged in the business of transmitting messages for other parties shall be authorized or knowingly allowed by the second party to transmit such messages over such lines. The second party will cause each of its exchanges to turn over and deliver to the licensor and such parties as it may from time to time appoint, exclusively, all messages for electrical transmission to points outside the territory of such exchange collected by or coming on the wires or within the control of the exchange, where the licensor or such party has wires and will transmit the same, so far as the second party can lawfully control the same, and unless otherwise specially directed by its customers; but will not solicit such special directions, nor receive any pay tolls for transmission over other lines, unless compellable by law so to do. It shall keep and furnish an account of each such message transmitted or received, and of connections made therefor, and shall collect and on demand pay over to the licensor or its said appointees, respectively, the tolls for transmission beyond the exchange system, according to such rates and rules as each shall establish, and shall exhibit its accounts and the tickets from which they are made, so far as may be proper to verify the same. Each exchange shall, if and when so requested by the licensor, make proper switch-board or other connection between the lines of the licensor or its licensees from points without its exchange district and terminating in such exchange office, for the purpose thereby of making up a through line between points without such exchange district. In respect of all the business provided for by this section,

72 the second party shall make no charge to its own subscriber or customer, but shall make the following charges and none others: The second party shall receive upon communications originating within an exchange and passing over the lines of the exchange and the extraterritorial lines by direct connection, fifteen per cent. of the gross tolls on the extraterritorial line not to exceed five cents for any one message or communication occupying not more than five minutes; in case an exchange shall be required to make a switch-board connection for the purpose of making up a through line between points, without its exchange district, then the exchange shall receive as compensation for making such connection, such share of the through toll (terminal expenses being first deducted) as may be agreed upon, not, however, a greater share thereof than ten miles is of the whole length of the through line so made up, and not in any event to exceed five cents for any one communication occupying not more than five minutes; upon messages collected by an exchange over its lines or otherwise and forwarded by telegraph, the exchange shall receive fifty per cent. of the commission paid to the lessor by the telegraph company, and the whole of the compensation for messenger service paid by the telegraph company; for delivering telegraph messages by telephone to subscribers, an exchange may have free use of the lessor's line to the telegraph office, when such use does not interfere with the proper despatch of

outgoing business, and may receive from the telegraph company the whole of such compensation as it and the telegraph company may agree upon; for messages delivered by messenger for the telegraph company, it may receive the whole compensation. The licensor now appoints the Western Union Telegraph Company to perform all telegraphic transmission under this article.

Touching the lines which the first party may desire and direct to be built connecting the exchanges of the second party with the telegraph offices of the company or companies which the first party may appoint to receive the telegraph messages to be turned over by said second party.

Whereas the first party has, at the request of the second party, in consideration of its undertaking hereinafter in this paragraph contained, consented to increase the part to be paid the exchange of the commission paid the first party by the telegraph company upon messages turned over from twenty-five (25) per cent. to fifty (50) per cent. thereof:

Now the second party, in consideration thereof, agrees that
73 it will, at its own cost and without charge or expense to said first party, build, equip and maintain such lines and furnish all instruments necessary to be used for the operation thereof, except telephones to be used in the telegraph office, but that such lines when built shall become and remain the property of said first party.

Signed in duplicate on the day first above written.

THE AMERICAN BELL TELEPHONE CO.,
By its general manager, C. J. F.

Approved:

JOHN E. HUDSON.
H. STOCKTON, *President.*

[Seal American Bell Telephone Co.]

SOUTHERN BELL TELEPHONE & TELEGRAPH CO.;
By JNO. VAN HORNE, *President.*

[Seal Southern Bell Telephone and Telegraph Co.]

D. J. GARSON, *Secretary.*

Contract for Extraterritorial Connecting Lines.

Form 113 D.

This agreement, made this first day of September, A. D. 1888, by and between the American Bell Telephone Company, a corporation duly formed under the laws of Massachusetts, lessor and licensor, of the first part, and the Southern Bell Telephone and Telegraph Company, a corporation created under the laws of the State of New York, lessee and licensee, of the second part, witnesseth:

3. The lessee may construct lines between exchanges in said territory, and may use such lines for telephonic personal communication between a customer in one such exchange district and a customer in another such exchange district, and not otherwise, except in connection with lines mentioned in article 6 hereof owned or specially licensed by the lessor, and by it designated for that purpose, and then only as and for the purposes expressed in said article 6. The lessee shall not directly or indirectly connect its lines with any telephone or telegraph line or telephone exchange, except lines with which it has been by the lessor specially authorized to connect; nor deliver messages to be forwarded to destination by
74 telegraph to any telegraph company, except such as may be specially designated by the lessor for that purpose, so far as it can lawfully control the same, or unless specially directed by a customer so to do (but it will not solicit such special direction nor receive and pay tolls over other lines unless compellable by law so to do). For the purpose of establishing telephonic personal communication between customers as aforesaid, the lessee may have and exercise all the right to construct and operate telephone lines in said districts, and there maintain suitable offices and connect with exchange systems established or to be established, as aforesaid, which the lessor has reserved and is or may be entitled to grant for extra-territorial connecting lines under licenses to exchanges made or to be made as aforesaid; but the lessee shall connect with each local exchange and do its business so far as the same can, in the opinion of the lessor, conveniently be so done, with the customers thereof through said exchange, unless the American Bell Telephone Company, or its successors, shall decide that the exchange fails to furnish proper facilities. For the purpose of this contract an exchange district means a territory, not to cover more than a single town or city, or a circle of fifteen miles radius measured from a central point, which the licensor has included and covered or may hereafter include and cover in and by an exchange license.

Signed on the day above written in duplicate.

THE AMERICAN BELL TELEPHONE CO.,
By its general manager, C. J. F.

Approved:

JOHN E. HUDSON.
H. STOCKTON, *President.*

[Seal American Bell Telephone Co.]

SOUTHERN BELL TELEPHONE & TELEGRAPH CO.,
By JNO. VAN HORNE, *President.*

[Seal Southern Bell Telephone and Telegraph Co.]

D. J. CARSON, *Secretary.*

75 "BELL EXHIBIT NO 6."

(Copy.)

This agreement, made the first day of September, A. D. 1888, by and between the Western Union Telegraph Company, a corporation created under the laws of the State of New York, for itself and also acting for and being duly authorized by the Gold and Stock Telegraph Company, American Speaking Telephone Company and Harmonic Telegraph Company, corporations created under the laws of said State, of the first part, the American Bell Telephone Company, a corporation created under the laws of the Commonwealth of Massachusetts, of the second part, and the Southern Bell Telephone and Telegraph Company, a corporation created under the laws of the State of New York, of the third part.

Witnesseth, whereas the first party hereto, the National Bell Telephone Company and James M. Ormes entered into a certain agreement dated August 26th, A. D. 1879, touching the licensing and use of telephones in the States of Virginia, North Carolina, South Carolina, Georgia, Alabama, Florida and a portion of West Virginia, to which agreement said The American Bell Telephone Company has been substituted as a party in the stead of said National Bell Telephone Company, and said Southern Bell Telephone and Telegraph Company as a party in the stead of James M. Ormes, under which agreement and the license contracts issued by the National Bell Telephone Company and the American Bell Telephone Company in pursuance thereof said Southern Bell Telephone and Telegraph Company, the third party hereto, is now operating exchanges and telephone lines in said territory; and

Whereas the corporations comprising the first party, and said National Bell Telephone Company entered into a certain agreement, dated November 10, A. D. 1879, wherein it was agreed that the territory covered by said agreement, dated August 26, A. D. 1879, should, at the "expiration" of said agreement, be included in said agreement dated November 10, A. D. 1879, and

Whereas the third party desires to enter into perpetual contract relations with the second party, and the second and third parties have agreed thereupon subject to the execution hereof.

Now, therefore, it is agreed as follows:

That said agreement dated August 26, A. D. 1879, be, and it is hereby terminated on and as of this date as to all parties
76 thereto, with like effect as if this date were the dates of expiration fixed in said agreement, and this determination shall be taken to be an "expiration" within the meaning of said agreement dated November 10, A. D. 1879, except that the bonus on telephones shall, until and including August 26, A. D. 1889, be and be paid by the second party and the third party to the first party as provided in said agreement dated August 26, A. D. 1879.

In witness whereof the parties hereto have caused their respective

corporate seals to be hereto affixed, and these presents to be signed in triplicate by their respective officers thereto duly authorized.

THE WESTERN UNION TELEGRAPH COMPANY,
Acting for itself and also for
THE GOLD AND STOCK TELEGRAPH COMPANY,
THE AMERICAN SPEAKING TELEPHONE COMPANY, AND
THE HARMONIC TELEGRAPH COMPANY,
(Signed) By NORVIN GREEN, *President.*
[SEAL.]
(Signed) A. R. BREWER, *Secretary.*
THE AMERICAN BELL TELEPHONE COMPANY,
By ITS GENERAL MANAGER.
Approved:
(Signed) JOHN E. HUDSON.
(Signed) H. STOCKTON, *President.*
[SEAL.]

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY,
(Signed) By JNO. VAN HORNE, *President.*
[SEAL.]
(Signed) D. I. CARSON, *Secretary.*

77 The above-named Gold and Stock Telegraph Company, American Speaking Telephone Company and Harmonic Telegraph Company, hereby acknowledge the authority of the Western Union Telegraph Company to act for and represent them in executing the foregoing instrument, and agrees to be bound by and carry out its provisions.

In witness whereof said corporations have caused their respective seals to be affixed hereto and these presents to be signed in triplicate by their respective officers on this twenty-fifth day of January, A. D. 1889.

THE GOLD AND STOCK TELEGRAPH COMPANY,
[SEAL.] (Signed) By NORVIN GREEN, *President.*
(Signed) A. R. BREWER, *Secretary.*
THE AMERICAN SPEAKING TELEPHONE COMPANY,
[SEAL.] (Signed) By NORVIN GREEN, *President.*
(Signed) A. R. BREWER, *Secretary.*
THE GOLD AND STOCK TELEGRAPH COMPANY,
For THE HARMONIC TELEGRAPH COMPANY,
[SEAL.] (Signed) By NORVIN GREEN, *President.*
(Signed) A. R. BREWER, *Secretary.*

"BELL EXHIBIT No. 7."

(Duplicate.)

This agreement, made this 23rd day of October, 1894, between the Western Union Telegraph Company, hereinafter called the telegraph company, and the Southern Bell Telephone and Telegraph Company, licensee of the American Bell Telephone Company, hereinafter called the licensee.

First. The telegraph company, in consideration of the payment which the said licensee hereby agrees to make to the tele-
78 graph company of a pole rental charge amounting to two hundred and four ($204.00) dollars per annum, payable annually (in advance), hereby grants to the said licensee the right to attach to and maintain at its own expense upon the poles of the said telegraph company between Richland and Ashland, Va., (17 miles) two wires, together with the necessary insulators and fixtures therefor.

Second. The right of occupancy hereby granted is to be exercised by the said licensee subject to the regulations of the telegraph company, and in such manner as shall not conflict with the telegraph company's own use of said poles, nor interfere with the working of the use of its wires thereon; and this agreement shall be terminable at the will of either party at any time hereafter upon thirty days' written notice from the other of an intention to terminate the same, when said wires and fixtures shall be removed from said poles without delay at the expense of the licensee.

In case of such termination by the telegraph company, before the expiration of any year for which pole rental shall have been paid, then, and not otherwise, shall the telegraph company refund to said licensee the charge for pole rental for the unexpired portion of such year.

Third. No use of the telegraph company's poles, under this license, however extended, shall be taken as creating or vesting in the said licensee any ownership or property in said poles of the telegraph company.

Fourth. This license is personal to the said licensee, and is granted in accordance with and subject to the provisions of the agreement of November 10, 1879, between the Western Union Telegraph Company and others, and the National Bell Telephone Company.

This license is not assignable, and must be approved by an executive officer of the Western Union Telegraph Company.

In witness whereof the parties hereto have hereunto set their hands the day and year first above written.

THE WESTERN UNION TELEGRAPH COMPANY,
By J. B. TREE, *Superintendent.*

Approved: JNO. VAN HORNE,
Vice-Pres't W. U. Tel. Co.

THE SOUTHERN BELL TELEPHONE AND TELEGRAPH CO.,
By C. E. McCLUER, *Supt.*

79

(On margin:)

The licensee agrees to pay one-half the cost of furnishing and putting up new six-wire cross-arms including labor, bolts and washers and other expenses, and the whole cost of three steel pins in each arm between Richmond and Ashland.

"BELL EXHIBIT No. 8."

Places outside of Richmond connected by telephone with W. U. Telegraph Company office at Richmond, at which places there are no telegraph stations.

	Distance from Richmond.
Aylett's, King William Co., Va.	28 miles.
Kenwood, Hanover Co., Va.	14 miles.
Manquin, King Wm. Co., Va.	23 miles.
Minorsville, Va.	27 miles.
Old Church, Hanover Co., Va.	15 miles.
Pole Green, " " Va.	9 miles.
Ellerson's, " " Va.	6 miles.

R. B. ROOD, *Mgr.*

"BELL EXHIBIT No. 9."

(Copy.)

Executive office, Western Union Telegraph Company.

NEW YORK, *May 21st*, 1881.

American Bell Telephone Company, Boston, Mass.

GENTLEMEN: In accordance with your request of sundry dates, we have to advise that our managers at sundry offices have been instructed by us to permit the necessary line connections between your exchange and his office; to receive and forward messages transmitted or delivered to him; to observe such rules and regulations respecting the business received by him from your exchange as your company may, from time to time, adopt, and communicate to him through us; to receipt for such messages as may be delivered by messenger, and keep such record of the business as will facilitate the calculation of the commissions due, and to extend to your exchange every facility for the verification of its records of the business thus transferred. He has also been instructed to pay over to your exchange, as soon after the first of each month as practicable (not later than the 10th), the full commission due to your
80 company on the business of the preceding month, as provided for by article 15 of the contract of Nov. 10, 1879.

Respectfully.

(S'd) J. B. VAN EVERY,
Act'g Vice-Pres't.

See list of dates and offices referred to above on other side hereof.

Galveston, Tex.	April 20.	Forms sent May 14, '81.
Houston, Tex.	April 20.	Forms sent July 15, '81.
Lockport, N. Y.	April 16.	Forms sent
Niagara Falls, N. Y.	April 19.	Forms sent Nov. 5, '81.
Nashville, Tenn.	April 20.	Forms sent Sep. 19, '82.
Richmond, Va.	May 6.	Forms sent
Natchez, Miss.	May 16.	Forms sent June 6, '81.
La Porte, Mich.	March 26.	Forms sent
Grand Haven, Mich.	March 10 and April 19.	Forms sent Sep. 22, '81.
Flint, Mich.	March 10 and April 19.	Forms sent
Ann Arbor, Mich.	March 10 and April 20.	Forms sent
Erie, Pa.	November 9 and April 2.	Forms sent May 14, '81.
Maquoketa, Ia.	January 11.	Forms sent July 1, '81.
Council Bluffs, Ia.	April 5.	Forms sent Aug. 2, '81.
Omaha, Neb.	Feb'y 28 and March 24.	Forms sent
Columbus, Ind.	April 5.	Forms sent June 14, '81.
Chillicothe, O.	December 23.	Forms sent July 8, '81.
Rushville, Ind.	March 26.	Forms sent June 14, '81.
Washington, Ind.	April 5.	Forms sent Aug. 10, '81.
Savannah, Ga.	Forms sent.	
Milledgeville, Ga.	Surrendered.	
Macon, Ga.	Forms sent.	
Columbia, S. C.	November 16.	
Charleston, S. C.	Forms sent.	
Augusta, Ga.	Forms sent Oct. 22, '81.	

22,170.

RICHMOND, VA., *Dec. 20th*, 1880.

Received from the American Bell Telephone Company the following instruments for use on a line connecting the office of the Western Union Telegraph Company with the telephone exchange at Richmond, Va.:

One transmitter, No. 6212.

One hand 'phone, No. R. 416.

Said instruments to remain the property of the American Bell Telephone Company and to be used only for the purpose of receiving and delivering telegraph messages.

(Signed) R. M. J. PAYNTOR,

Manager Western Union Telegraph Company.

"Bell Exhibit No. 10."

Statement Taken from Office Records of Southern Bell Telephone and Telegraph Co., Richmond, Va., Telephone Exchange.

Statement of amounts received from W. U. Telegraph Co. for telegrams received and delivered by telephone at Richmond, Va., to and from the W. U. Telegraph Co. since January 1, '94.

81

	Messages received by Western Union Telegraph Co. from telephones of the Southern Bell Tel. and Tel. Co.		Messages delivered from Western Union Tel. office in Richmond, Va., through telephones of the Southern Bell Tel. and Tel. Co. to its customers of the Richmond telephone exchange in Richmond, and to persons having telephones of said Southern Bell Tel. and Tel. Co. connected with the Richmond telephone exchange outside of said city of Richmond.	
1894.	Charges.	15 per cent. com.	No.	Com. at 2 cts. each.
Jan.	137 60	20 64	349	6 98
Feb.	119 95	17 99	277	3 54
Mar.	145 61	21 84	342	6 82
Apr.	154 62	23 19	246	4 92
May	132 48	19 87	261	5 22
June	154 13	23 12	307	5 14
July	134 71	20 21	291	5 82
Aug.	136 84	20 53	283	5 66
Sept.	137 19	20 58	291	5 82
Oct.	174 03	26 10	311	6 22
Nov.	130 44	19 57	261	5 22
Dec.	115 72	17 36	214	4 28
1895.				
Jan.	109 30	16 40	235	4 70
Feb.	136 40	20 46	281	5 62
May.	128 32	19 25	263	5 26
Apr.	135 22	20 28	312	6 24
May	134 02	20 10	318	6 36
June	182 54	27 38	369	7 38
July	154 17	23 13	344	6 88
Aug.	120 81	18 12	259	5 18
Sept.	160 98	24 15	311	6 22
Oct.	155 42	23 31	366	6 72
Nov.	142 53	21 38	281	5 62
Dec.	131 61	19 74	258	5 16
1896.				
Jan.	117 97	17 70	282	5 64
Feb.	119 93	17 99	284	5 68
Mar.	131 74	19 76	313	6 26
Apr.	127 88	19 18	304	6 08
May	147 48	22 12	293	5 86
June	147 13	22 07	282	5 64
July	112 76	16 91	279	5 58
Aug.	118 42	17 76	265	5 30
Sept.	92 00	13 80	249	4 94
Oct.	124 27	18 64	257	5 14
Nov.	130 77	19 62	231	4 62
Dec.	117 86	17 68	239	4 78
1897.				
Jan.	135 83	20 37	251	5 02
Feb.	126 70	19 00	289	5 78
Mar.	132 82	19 92	301	6 02
Apr.	124 64	18 70	266	5 32
May	134 84	20 23	263	5 26

82 I have examined the above statement in connection with the records in this office, and find the same correct, with the exception of some few trivial differences amounting to only a dollar or two one way or the other.

J. P. STITH,
Ch'f Cl'k W. U. Tel. Co.

Richmond, Va., June 30, '97.

"BELL EXHIBIT No. 11."

Those Bell Poles.

A communication addressed by Superintendent of Fire Alarm Thompson to Colonel McCluer, of the Bell Telephone Company, calling his attention to the fact that certain of the Bell Company's poles were in a dangerous condition, and the reply of the Bell Company to the same were read.

Mr. Bloomberg and Chairman Allen were of the opinion that *that* the street committee should refer the matter to the council without any recommendation, but Mr. Carter declared that the time had now arrived to take some decisive action to rid the streets of the Bell telephone poles.

The committee finally passed a resolution directing that the opinions of the city engineer and of the city attorney be obtained as to the best means of getting rid of the said poles.

This evidence is admitted as proving the substance of what took place before the committee on streets, but it is objected to by respondent as improper, irrelevant and immaterial.

"BELL EXHIBIT No. 12."

Just before the injunction was gotten in the case of The Southern Bell Telephone and Telegraph Company *versus* The City of Richmond, Va., the customers of said company were rapidly diminishing in numbers, and others were talking about giving up their telephones, and as soon as the injunction was granted new subscribers began to come in rapidly, and many parties who had given up their telephones had them put back, so that while at the time the injunction was granted there were only 878 telephones connected with the Richmond telephone exchange, there are now "1,150" telephones in use connected with said exchange. Just before the injunction was gotten numbers of people said that they would not con-

83 tinue to use the telephones of the Southern Bell Telephone and Telegraph Company, because they believed said company would be prevented from doing business in Richmond, and there was a great deal of talk to this effect.

Some of the subscribers in giving notice of intention to discontinue the telephones of said company, gave as a reason for giving up their telephones that the said company's franchise having been

revoked, the company could not continue to do business in Richmond.

After the time specified in the ordinance revoking the franchise of the Southern Bell Telephone and Telegraph Company had expired, and while routes were being laid out to be occupied by the Standard Telephone Company, I was told by W. H. Thompson, superintendent of the Richmond city fire alarm, that the Standard Telephone Company had been instructed to set their poles alongside of the poles of the Southern Bell Telephone and Telegraph Company, and that after this was done our poles would be chopped down unless we took them down ourselves.

R. B. HOOD,
Mgr. Richmond Telephone Exchange,
So. Bell Tel. & Tel. Co.

July 1, 1897.

STATE OF VA.,
City of Richmond, } *To wit:*

Personally appeared before me, Wm. E. Crawford, a notary public in and for the city aforesaid, in the State of Virginia, R. B. Hood, whose name is signed to the foregoing writing, and made oath that he is the manager of the *the* Richmond exchange of the Southern Bell Telephone and Telegraph Co., and that the facts contained in said writing are true.

Given under my hand this 1st day of July, 1897.

WM. E. CRAWFORD, *N. P.*

It is also true that previous to the obtaining of the injunction another telephone company called the Standard Telephone Company (afterwards known as the Richmond Telephone Company) had started in Richmond with, as it claimed, between eight hundred (800) and one thousand (1,000) subscribers, several hundred of whom were old subscribers of the Southern Bell Telephone and Telegraph Company, and that the new company only charged $24 (twenty-four dollars) for private residences and $36 (thirty-six dollars) for places of business in the city of Richmond, these being the annual rates of said new company, while the Southern Bell
84 Telephone and Telegraph Company had up to the time the new company was organized, charged sixty dollars ($60) for places of business and forty dollars ($40) for private residences, and on the first day of October, 1896, in order to meet the rates of the new company, said Southern Bell Telephone and Telegraph Company reduced its rates to thirty — ($30) for places of business and eighteen dollars ($18) for private residences.

R. B. HOOD,
Manager Richmond Telephone Exchange,
So. Bell Tel. & Tel. Co.

July 1, '97.

"BELL EXHIBIT NO. 13."

Mess. Leake & Carter, attorneys, city.

GENTLEMEN: I can testify very positively that during the summer and fall of 1894 intimations were several times given me by Col. Cutshaw and other municipal officers, whose names I cannot now recall, that if the Southern Bell Telephone and Telegraph Company did not concede the demands of the committee on grounds and buildings for free telephones for the city hall, that the company would either be subjected to a pole tax, which would cost considerably more than the free telephones, or that an effort would be made to revoke the municipal franchise.

This intimation was quite broadly given during my interviews with various city officials, whose names I cannot now recall, and in my letters to my executive officers I warned them that these threats would, I feared, be carried out unless the company met the demands of the city engineer and the committee on grounds and buildings.

Yours truly,

C. E. McCLUER,
Superintendent.

"BELL EXHIBIT NO. 14."

Stations outside of city of Richmond, Va., having telephones of Southern Bell Telephone and Telegraph Co. connected with Richmond telephone exchange.

Henrico Co., Va.	81
Manchester, Va.	73
Chesterfield Co., outside of Manchester, Va.	6
Hanover Co., Va.	4
King William Co., Va.	5
	169

R. B. R.

85 "BELL EXHIBIT NO. 15."

SUPERINTENDENT'S OFFICE,
WESTERN UNION TELEGRAPH COMPANY.

There is in the office of the Western Union Telegraph Company in Richmond, Va., three sets of 'phones received from the American Bell Telephone Company, which are now and have been for many years used for receiving and delivering messages from and to subscribers of the Southern Bell Telephone and Telegraph Company, which are sent to and received from points in and out of the State of Virginia and in foreign countries over the wires of the Western Union Telegraph Company and cables between the U. S. and Europe. These 'phones in the Western Union office in Richmond connect with all the 'phones of the Southern Bell Telephone and Telegraph Company used in and connected with its exchange in Richmond, and are operated as follows, to wit:

A subscriber of the Southern Bell Telephone and Telegraph Company who wishes to send a telegram over the Western Union lines calls up the Western Union office in Richmond through his 'phone; the clerk of the Western Union Telegraph Company at the 'phone in its office receives the message through the 'phone, puts it in writing and hands it to the operator of the Western Union Telegraph Company, who transmits it over the wires of the latter Co. to its destination.

When a telegram is received from a point outside of Richmond over the wires of the Western Union Telegraph Company to be sent to a subscriber of the Southern Bell Telephone and Telegraph Company, the Western Union telegraph operator who receives the message puts it in writing and hands it to the 'phone clerk of the latter company, who has charge of one of the 'phones in its office in Richmond, who calls up the person to whom the message is addressed over the 'phone and delivers it to them through the 'phone. Telegrams are thus delivered to a large number of subscribers of the Southern Bell Telephone and Telegraph Co., located in and outside of the city of Richmond, Va., but only to those subscribers who request delivery of telegrams by telephone. The 'phone clerk in the Western Union office goes on duty at 9 a. m. daily and attends to these 'phones continuously until 6 p. m. At that time until 2 a. m. the said 'phones in the Western Union office are operated by the regular receiving clerk of the Western Union Telegraph Company on the first floor of the office.

Over 50% of the telegrams thus sent and received through
86 these 'phones are messages to and from points outside the State of Virginia. A number of telegrams are sent through these 'phones from pay stations of the Southern Bell Telephone and Telegraph Co., in and outside of Richmond, connected with the Richmond exchange, by persons who are not subscribers of the Southern Bell Telephone and Telegraph Company.

Richmond, Va., June 30, '97. J. B. TREE, *Supt.*

"BELL EXHIBIT No. 16."

Subject: Study for long lines.

Southern Bell Telephone and Telegraph Company, 26 Cortlandt street.

Received July 16, 1895.

John E. Hudson, pres't.
James Merrihew, vice-pres't.
R. H. Rochester, treasurer.
Geo. H. Fearons, counsel.
D. I. Carson, sec'y and gen. supt.

NEW YORK, *July* 16, 1895.

C. E. McCluer, Esq., supt., Richmond, Va.

DEAR SIR: I wish you would buy one or two copies of the Rand & McNally pocket maps of Virginia and West Virginia and North

Carolina, and indicate thereon by red lines the result of a study by yourself and Mr. Rood of a comprehensive system of long lines for your district, which could join the second district system at Charlotte, and possibly Wilmington. I suggest Mr. Rood's co-operation, because I fancy from his knowledge of the country, he could take the map and make the first draft, thus saving you some time, showing the most desirable points to be connected up as terminals, and those to be reached en route. It might be well to make two alternative systems. In doing this work, I should ignore the proposed line of the long-distance company from Washington to Norfolk, and make your drawing as if we were to be the only builders. The probability is that when arrangements are completed for them to build, we shall have an opportunity to put onto their poles such lines as we desire for our local service. You would then, for example, show
a line from Alexandria, via Fredericksburg, to Richmond,
87 Petersburg and Norfolk, from Richmond to Lynchburg, Lynchburg to Charlotte, Raleigh to Wilmington, Raleigh to Greensboro, Danville to Winston, Lynchburg to Staunton and perhaps up the valley; Staunton to Charleston, Charleston to Huntington and Point Pleasant, &c., &c. Then make up a schedule, giving a list of the points connected, with the population of each place, number of exchange subscribers where there are exchanges, mileage between points and total mileage, average of mileage per exchange subscriber, average population per mile, based on total population of all points reached. My idea is to make an exhibit of such a system as we can conceive to be desirable, provided an unlimited supply of money was available to do the work. I shall be glad to have the results as early as convenient, and would like for you to give the whole matter as full and careful consideration as you can. This study will be of value for reference and further consideration.

Yours truly, D. I. CARSON, *Gen. Supt.*

Answered July 18, 1895.
R. B. R. July 29, 1895.
Answered Aug. 10, 1895.

EXHIBIT C. OF R. No. 1.

For this exhibit see page 46, the same having been filed with the answer of the City of Richmond.

EXHIBIT C. OF R. No. 2.

I, W. H. Thompson, the undersigned, have read so much of the affidavit made by Mr. R. B. Rood on July 1st, 1899, and filed in the suit of the Southern Bell Tel. & Tel. Co. *v.* City of Richmond, as refers to an alleged conversation with me. I did say to him that in some cases the Standard Telephone Company had been instructed to place their poles alongside of those of the Southern Bell Tel. & Tel. Co. But I never told him that after that had been done the

poles of the last-named company would be chopped or cut down, unless that company should take them down. I had no knowledge that would justify me in making such a remark.

W. H. THOMPSON,
Superintendent Fire-alarm Telegraph.

STATE OF VIRGINIA, }
City of Richmond, } *To wit:*

88 This day the above-named, W. H. Thompson, personally appeared before me, Ewd. J. Warren, a notary public for the city and State aforesaid, in my office in said city, and made oath that the above statement is true.

Given under my hand this, the 17th day of July, 1897.

EWD. J. WARREN,
Notary Public.

"EXHIBIT C. OF R. No. 3."

The following abstracts are from minutes of com. on streets:

DECEMBER 17TH, 1894.

From common council: An ordinance defining the manner of laying underground conduits, tubes or pipes for electrical conductors, cables and wires. Motion of Mr. Bloomberg to lay it on the table until next meeting, and that the telephone and telegraph authorities be invited to attend. Adopted.

DECEMBER 31ST, 1894.

The ordinance referred to the committee as to conduits, was read, and Mr. J. B. Tree, supt. Western Union Telegraph Co., made some remarks in regard to same.

On motion of Mr. King it was laid on the table.

On motion of Mr. Bloomberg that the ordinance as to underground conduits, tubes, &c., be taken up and the same be referred to city attorney and city engineer for such changes and suggestions as they may deem necessary, also to name such streets where it should be applicable. Adopted.

FEBRUARY 28TH, 1895.

By Mr. King: That the city attorney and city engineer prepare an ordinance as to telephones, routes and all restrictions, a general ordinance covering all questions of telephone and conduits. Adopted.

True copies from records of committee on streets.

FRANK T. BATES, *Clk.*

July 16, '97.

Statement of Agreed Facts.

1st. That the respondent, The City of Richmond, is a municipal corporation, chartered and existing under the laws of the State of Virginia, a citizen of the said State, having its principal office and

chief place of business within the territorial limits of the
89 county of Henrico, in the eastern district of Virginia, under the statute of Virginia, approved May 24th, 1870.

2nd. That the streets and alleys of the city of Richmond, which are occupied by the complainant company, are kept up and maintained at the expense of the respondent city as public highways, and are letter-carrier routes, established for the collection and delivery of United States mail matter.

3rd. That the 'phones of the plaintiff company connecting with its central office in said city and through said office with the other 'phones and stations of said company, are used by the officers of the United States for official and other communications at the two post-office stations in said city, at the United States Weather Bureau, at the office of the United States engineer for the improvement of James river, and at the custom house—all of said 'phones so used by the United States officials are in the city of Richmond, and are rented by the U. S. Government at the same rates as are charged to private persons, and on the same terms and conditions.

4th. The office of the Western Union Telegraph Company, in Richmond, connects by continuous wires with the offices of said telegraph company, in the District of Columbia, in every city and town of any size in every State of the United States and foreign countries, and receives and transmits messages to and from said cities, States and countries.

5th. That the plaintiff has had for more than ten years telephone plants and exchanges in all the large cities, and in many other places in the States of Virginia, West Virginia, North and South Carolina, Georgia, Alabama and Florida.

6th. That in July, 1895, the general superintendent of the complainant company wrote to Mr. C. E. McClure, its superintendent at Richmond, Virginia, the letter filed in this cause, marked "Bell Ex. No. 16," that Mr. McClure performed the work therein required, and in August, 1895, forwarded to Mr. D. I. Carson, said general superintendent, several very full and detailed estimates and schedules, as requested in said letter, and also returned the maps mentioned in said letter, having designated thereon as desired the system of long lines, suggested in said letter, to and from the places specified in said letter, some of which are within and some without the State of Virginia. Papers were also shown the attorney
90 for respondent city showing that a similar request had been made in April, 1894, by the said general superintendent to the superintendent of the Georgia, Alabama and Mississippi district to furnish similar estimates of a system of long lines to and from points within that district to and from points without the same for the purpose of telephonic communication with Richmond and other points, and it is admitted the said request was fully complied with. The said estimates, and schedules and maps, were shown to the attorney for the respondent, but it is agreed the same need not be filed.

7th. The allegations of fact made in the bill of complaint, not denied in the answer, and about which the answer neither pro-

fesses ignorance, nor calls for proof are admitted, unless disproved by evidence or the agreed facts.

9. Whenever 'phones are spoken of as the 'phones of the complainant, reference is had to the 'phones mentioned in Bell Ex. No. 5.

It is agreed that when any telegraph message is to be sent by any one by means of a 'phone of the complainant company over the wires of the Western Union Telegraph Company, the party desiring to send the message rings up over his 'phone the central office of the complainant company, which then connects his 'phone with the 'phone in the telegraph office, and thus delivers the message to be sent over the telegraph wires.

When a telegraph message received over the wires of the Western Union Telegraph Company is to be delivered by a telephone of the complainant company, the operator of the telephone in the office of the telegraph company calls up the central office of the complainant, and, having been put in connection with the person for whom the telegraph message is intended, delivers the message over the telephone wires of the complainant company.

This method of communication between the said 'phones in the telegraph office of the city of Richmond and those outside of the telegraph office is exactly the same in use between other 'phones of the said complainant company in said city.

THE COMPLAINANT,
By LEAKE AND CARTER,
STILES & HOLLADAY.
CITY OF RICHMOND,
By C. V. MEREDITH.

91 *Decree.*

Entered Aug. 23, 1887.

THE SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY
vs.
THE CITY OF RICHMOND.

The court, without passing on the rights claimed by the complainant company under the laws of Virginia and the ordinances of the city of Richmond, is of opinion and doth adjudge, order and decree, that the complainant company has, in accordance with the terms and provisions and under the protection of the act of Congress of the United States approved July 24th, 1866 (which is an authority paramount and superior to any State law or city ordinance in conflict therewith) the right "to construct, maintain and operate its lines over and along" the streets and alleys of the city of Richmond, both those now occupied by the complainant company and those not now so occupied, and to put up, renew, replace and repair its lines, poles and wires over and along said streets and alleys as well as to maintain, construct and operate the same and to connect its lines with new subscribers along said streets and alleys, and the said

city of Richmond, its agents, officers and all others are enjoined and restrained from cutting, removing, or in any way injuring said lines, poles and wires of the complainant company, and from preventing or interfering with the exercise of the aforesaid rights by the complainant company, and also from taking proceedings to inflict and enforce fines and penalties on said company for exercising its said rights.

And the court doth adjudge, order and decree that the defendant do pay to the complainant its costs in this suit incurred to be taxed by the clerk, and this cause is ordered to be removed from the docket and placed among the ended causes, but with liberty to either party hereto on ten days' notice to the other to reinstate this cause on the docket of this court, on motion, for the purpose of enforcing and specifically defining, should it become necessary, their respective rights under this decree.

NATHAN GOFF,
U. S. Circuit Judge.

August 23, 1897.

92 *Order.*

Entered Aug. 28, 1897.

SOUTHERN BELL TEL. & TEL. CO.
vs.
CITY OF RICHMOND.

This day came The City of Richmond by counsel and moved the court to modify its decree in this cause of August 23, 1897, by inserting therein after the words "construct and operate the same," the following words, to wit: "so far as to receive from and deliver to the Western Union Telegraph Co. messages sent from beyond the limits of the State of Virginia, or to be sent beyond the said limits," and by inserting therein after the words, "interferring with the exercise of the aforesaid rights by the complainant company," the following words, to wit: "so far as the reception from and delivery to the Western Union Telegraph Company of any message sent from beyond the limits of the State of Virginia, or to be sent beyond said limits," but the counsel for the complainant objected, and the court intending by said injunction to enjoin the city from interferring with the local business and messages, as well as those of an interstate character, doth decline and refuse to so modify said decree.

NATHAN GOFF,
U. S. Circuit Judge.

August 28, 1897.

Petition for Appeal and Assignment of Errors.

Filed Aug. 28, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, Complainant,
vs.
CITY OF RICHMOND. } In Equity.

To the honorable the judges of the circuit court of United States for the eastern district of Virginia:

The petition of The City of Richmond, respondent in the cause aforesaid.

Your petitioner respectfully represents that, by a decree of your honorable court, dated August 23rd, 1897, and made and
93 filed in the cause aforesaid, it was adjudged and decreed that The Southern Bell Telephone and Telegraph Company, complainant as aforesaid, "has, in accordance with the terms and provisions, and under the protection of the act of Congress of the United States, approved July 24th, 1866 (which is an authority paramount and superior to any State law or city ordinance in conflict therewith), the right 'to construct, maintain and operate its lines over and along' the streets and alleys of the city of Richmond, both those now occupied by the complainant company and those not now so occupied, and to put up, renew and repair its lines, poles and wires over and along said streets and alleys, as well as to maintain, construct and operate the same and to connect its lines with new subscribers along said streets and alleys, and the said city of Richmond, its agents, officers and all others are enjoined and restrained from cutting, removing or in any way injuring said lines, poles and wires of the complainant company, and from preventing or interfering with the exercise of the aforesaid rights by the complainant company, and also from taking proceedings to inflict and enforce fines and penalties on said company for exercising the said rights, and that the defendant do pay to the complainant its costs in this suit incurred to be taxed by the clerk."

Your petitioner represents that it feels itself to be aggrieved because of errors in the record and proceedings on which said decree was founded, and because of errors in said decree. The said respondent, therefore, prays that it may be allowod an appeal in the United States circuit court of appeals for the fourth circuit upon said decree, in order that said decree may be reviewed and reversed by said court, and that the proper citation may be issued and served upon the complainant, and the record of the proceedings in this cause may be transmitted to said United States circuit court of appeals, and that your petitioner, therefore, prays that your honor will prescribe the amount of bond to be given by it.

Your petitioner files herewith the following assignment of errors, which it asserts exist in said record, proceedings and decree, and which are intended to be urged in the said United States circuit court of appeals for the fourth circuit.

Assignment of Errors.

First. The said circuit court erred in entering the preliminary restraining order against your petitioner, entered October 6, 1896.

Second. The said circuit court, upon hearing said de-
94 murrer, erred in not sustaining the same and in not ordering the said bill of complaint to be dismissed.

Third. The said circuit court erred in overruling the demurrer, filed Nov. 16, 1896, by your petitioner as respondent to a bill of complaint filed in this cause by the Southern Bell Telephone and Telegraph Company, and in entering the decree of the — day of March, 1897, continuing said injunction until final decree should be entered in this cause.

Fourth. That the court erred in said final decree of August 23rd, 1897, in failing to pass upon the effect had upon the alleged rights of the complainant by the statute of Virginia, referred to in said bill of complaint, and the ordinance of the city of June 26th, 1884, offered as an exhibit and as evidence in this cause, under which it began its operation in the said city of Richmond, and under which it was operating up to the time of the passage of the city ordinance, approved December 14, 1894, and filed in this cause, because it plainly appears from said ordinances that the complainant had, from the time it began operations in said city of Richmond, and under which it was operating up to the time of the passage of said ordinance of December 14th, 1894, a contract with said city, by which the complainant agreed to cease its operations upon the streets and alleys of the said city whenever required, as set forth in the 5th section of the ordinance of June 26th, 1884, and because it had been so required to cease its operations by said ordinance of December 14th, 1894.

Fifth. That there is error in said final decree because a telephone company is not a telegraph company, and is not embraced in the terms of the act of Congress, approved July 24th, 1866.

Sixth. That there is error in said final decree, because if said act of Congress, approved July 24, 1866, does embrace telephone companies at all, it only embraces such as do an interstate business, and only to the extent of its interstate business, while it plainly appears from the pleadings and evidence in this cause that the complainant does not do an interstate business, but only a local business.

Seventh. There is error in said final decree, because if said act of Congress, approved July 24th, 1866, does embrace telephone companies at all, it only embraces such as do interstate business, and to the extent of its interstate business, and it plainly appears
95 from the pleadings and evidence in this cause that, if the complainant does an interstate business at all, it also does a

purely local business; yet in the decree no such distinction is recognized, and your petitioner is enjoined from interfering with the business of the company, even as to messages sent from one point in the State to another, and even from one point in the city to some other point in its limits.

Eighth. That there is error in said final decree, because the evidence plainly shows that there never was any contract directly or indirectly between the complainant company and the Western Union Telegraph Company, which made, or tended to make, the telephone business of the complainant company, or any part of said business, interstate commerce, or come within the terms or protection of section 8, article 1 of the Constitution of the United States as to commerce "among the several States."

Ninth. That there is error in said final decree, because the evidence plainly shows that if there ever was any contract between the complainant company and the Western Union Telegraph Company, which made or tended to make, the telephone business of the complainant company, or any part of said business, of such a nature as to come within the term- or protection of section 8, article 1, of the Constitution of the United States, as to commerce "among the several States," such contract ended on the 1st day of November, 1896.

Tenth. That there is error in said final decree, because even if the pleadings and evidence show that there was a contract between the complainant company and the Western Union Telegraph Company, which made the telephone business of the complainant company, or any part of said business, interstate commerce, or brought it within the terms or purview of section 8, article 1, of the Constitution of the United States as to commerce "among the several States," and that such contract was still in force at the time of the entering of said final decree, yet the said circuit court should not have entered its said final decree in such terms as it has done, so as to enjoin the city from interfering with the business of the company, even as to messages sent from one point of the State to another, or even from one point in said city to some other point in its limits.

Eleventh. That there is error in said final decree, because it gives the complainant an unrestricted right to erect poles anywhere in said city without being subject to the ordinance of the city
96 approved September 10, 1895, filed as Exhibit "G" with the bill of complaint, or any of its provisions, or any other regulation which may be hereafter ordered by the city authorities.

Wherefore, because of the errors aforesaid, your petitioner prays that said decree may be reviewed and reversed by said United States circuit court of appeals.

All of which is respectfully submitted.

CITY OF RICHMOND,
By C. V. MEREDITH, *City Att'y.*

Order Allowing Appeal.

Entered Aug. 28, 1897.

In the Circuit Court of the United States for the Eastern District of Virginia.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, Complainant,
vs.
CITY OF RICHMOND, Respondent.
} In Equity.

Ordered this 28th day of August, in the year 1897, that the appeal prayed in the above petition be granted, and that a proper citation be issued and served upon the complainant as prayed.

The amount of the appeal bond for the city of Richmond is fixed at $300.00.

NATHAN GOFF,
Judge Circuit Court of the U. S. for the Eastern District of Virginia.

Appeal Bond.

Filed Aug't 28, 1897.

Know all men by these presents, that we, The City of Richmond, as principal, and C. V. Meredith, as surety, are held and firmly bound unto the Southern Bell Telephone and Telegraph Company in the full and just sum of three hundred dollars ($300.00), to be paid to the said Southern Bell Telephone and Telegraph Company, its certain attorneys or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of August, 1897.

97 Whereas, at the circuit court of the United States for the eastern district of Virginia, in a suit lately depending therein in equity between The Southern Bell Telephone and Telegraph Company, complainant, and The City of Richmond, respondent, a decree was entered on the 23rd day of August, 1897, perpetually enjoining and restraining the city of Richmond from cutting, removing or in any way injuring the lines and poles of the complainant company and from preventing and interfering with the right of the said company to construct, maintain and operate its lines along and over the streets and alleys of the city of Richmond, both those now occupied by the complainant company and those not now so occupied, and to put up, renew, replace and repair its lines and poles over and along said streets and alleys, as well to maintain, construct and operate the same, and to connect its lines with new subscribers along said streets and alleys, and from taking any proceedings to inflict and enforce fines and penalties on said company

for exercising its said rights, and that the said respondent do pay to the complainant its costs in this suit incurred.

And whereas the said city has prayed an appeal to the United States circuit court of appeals for the fourth circuit, and the same has been allowed and a citation has been issued, directed to the Southern Bell Telephone and Telegraph Company, citing and admonishing it to be and appear at the said circuit court of appeals, to be held at the city of Richmond, in the State of Virginia, on the day in said citation mentioned.

Now, therefore, the condition of the above obligation is such that if the said city of Richmond shall prosecute its appeal with effect and shall pay and answer all the costs in the proceedings in said cause, if it shall fail to make good its appeal, then the above obligation to be void, otherwise to remain in full force and effect.

CITY OF RICHMOND, [SEAL.]
By C. V. MEREDITH.
C. V. MEREDITH. [SEAL.]

Approved:
NATHAN GOFF,
U. S. Circuit Judge.

August 28, 1897.

98 *Citation.*

Filed Aug. 28, 1897.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Southern Bell Telephone and Telegraph Company, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the fourth circuit, to be holden at Richmond on the 2nd day of November next, pursuant to an appeal from a decree of the circuit court of the United States for the eastern district of Virginia, in your favor, passed in a cause in said court wherein The City of Richmond is respondent and you are complainant, to show cause, if any there be, why the decree rendered against the said city of Richmond in said cause mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Nathan Goff, judge of the circuit court of the United States, this 28th day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

NATHAN GOFF,
U. S. Circuit Judge.

We accept legal service of the within.

LEAKE & CARTER.
STILES & HOLLIDAY.

Stipulation by Counsel as to Record.

Filed Sept. 10, 1897.

In accordance with the agreement set forth in the statement of evidence filed by counsel for the several parties in the court below, it is agreed, as to the papers filed in evidence by the complainant, marked "Bell Ex., No. 4," and "Bell Ex., No. 5," only the following portions are to be copied:

From "Bell Ex., *Fo.* 4," copy on page 22, from and including the words "This agreement," down to subdivision 2 of article 1; on page 23, copy subdivision 1, article 2; on pages 33 and 34, article 6; on page 34, article 7; on pages 44 & 45 copy subdivision 2 of article 12, and subdivision- 1 & 2 of article 13; on pages 47 & 48 copy subdivisions 1 & 2 of article 14; on pages 48, 49, 50, 51, 52 & 53 copy subdivisions 1, 2, 3, 4, 5, & 6 of article 15, and articles 17, 19 & 20. And it is agreed that no more of said exhibit be copied, as the rest does not pertain to the matters here at issue.

99 & 100

As to "Bell Ex., No. 5," it is agreed that the said paper, beginning with the words "This agreement," down to subdivision C, in article 2, shall be copied; and also subdivision D, of article 2; also the paper headed "Contract for exchanges." "Form 109 D" shall be copied from the words "This agreement," including therein said words down to article 5; and also that articles 7 and 9 shall be copied; and also so much of article 11 as begins with the words "Touching the lines," down to the words "The following erasures;" and also so much of the paper headed "Contract for extraterritorial lines, form 113 D," as is included between the words, including said words therein, "This agreement" and the word "witnesseth," and article 3 thereof. No more need be copied.

It is further stipulated that neither the original summons nor the injunction bond need be printed.

SOUTH. BELL TEL. & TEL. CO.,
By STILES & HOLLADAY.
CITY OF RICHMOND,
By C. V. MEREDITH.

Clerk's Certificate.

THE UNITED STATES OF AMERICA, }
Eastern District of Virginia. }

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, do hereby certify that the foregoing is a true transcript of the record in the cause in the caption mentioned, as agreed upon by counsel in a stipulation filed in the papers of this cause and made a part of the record.

Seal of the Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of my said court, at Richmond, in said district, this 10th day of September, 1897.

M. F. PLEASANTS, *Clerk.*

101 *Proceedings in the United States Circuit Court of Appeals, Fourth Circuit.*

CITY OF RICHMOND, Appellant, *vs.* SOUTHERN BELL TELEPHONE AND Telegraph Company, Appellee.	No. 241. Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

September 14, 1897.—Transcript of record filed. Same day appearance of Charles V. Meredith, Esquire, for the appellant.

Same day twenty copies of the printed record filed.

September 20, 1897.—Appearance of Leake & Carter, Esquires, and Stiles & Holladay, Esquires, for the appellee.

At the November term, 1897, to wit: November 12, 1897, the cause came on to be heard on the transcript of the record, and was argued by counsel and submitted.

At the February term, 1898, to wit: February 1, 1898, the court here announced and filed its opinion, which is as follows, to wit:

102 *Opinion.*

United States Circuit Court of Appeals, Fourth Circuit.

CITY OF RICHMOND, Appellant, *versus* SOUTHERN BELL TELEPHONE AND Telegraph Company, Appellee.	No. 241. Appeal from the Circuit Court of the United States for the Eastern District of Virginia, at Richmond.

Argued Nov. 12, 1897; decided Feb. 1, 1898.

Before Simonton, circuit judge, and Brawley and Purnell, district judges.

Charles V. Meredith, for appellant; Hill Carter, of Leake & Carter, and A. L. Holladay, of Stiles & Holladay, for appellee.

SIMONTON, *Circuit Judge:*

This case comes up on appeal from the decree of the circuit court of the United States for the eastern district of Virginia.

The complainant is a corporation organized under the laws of the State of New York as a telephone and telegraph company. It is engaged in the business of a telephone company and of constructing and operating telephone lines in and through the States of Virginia, West Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida. It has maintained and operated for several years all the apparatus necessary for transmitting telephone messages in the city of Richmond, Virginia, and has erected and maintained along certain streets and alleys of said city numerous poles and wires for this purpose.

The complainant company was incorporated on the 11th Decem-

ber, 1879. In 1884 it applied to the city of Richmond for authority to erect its poles and run its wires along the streets and alleys of said city; and by an ordinance passed 21st June, 1884, this permission was granted as to such routes as may be specified and agreed
103 on by a resolution or resolutions of the committee on streets, from time to time, and on the conditions and provisions of the ordinance. These conditions and provisions were: that on any route conceded by the committee on streets and accepted by the company, the poles should be so placed by the company under the direction of the city engineer as to allow for the use of said poles by the fire alarm and police telegraph, in all cases giving the choice of position to the city's wires. To furnish telephone service to the city at a special reduction of $10 per year for each station. No shade trees to be disturbed, cut or damaged without the permission of the city engineer and the consent of the owners of the property in front of which the trees stand. All this work to be in every respect subject to the supervision and control of the city engineer. The ordinance to be subject at any time to repeal, such repeal to go into effect twelve months after the passage of the repealing ordinance.

On the 13th February, 1889, The Southern Bell Telephone and Telegraph Company, the complainant, accepted without reservation all of the restrictions and obligations of the act of Congress, approved 24th July, 1866, entitled "An act to aid in the construction of telegraph lines and to secure to the Government the use of the same for postal, military and other purposes."

And thereupon, on 18th February, 1889, the Postmaster General certified that this acceptance was on file in the Post-office Department. This act of Congress is in these words:

"SECTION 5263. Any telegraph company now organized, or which may hereafter be organized, under the laws of any State, shall have the right to construct, maintain, and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States, which have been, or may hereafter be declared such by law, and over, under, or across the navigable streams or waters of the United States; but such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads."

"SECTION 5268. Before any telegraph company shall exercise any of the powers or privileges conferred by law such company shall file their written acceptance with the Postmaster General of the restrictions and obligations required by law."

104 On 14th December, 1894, the city council of Richmond repealed the ordinance of 26th June, 1884, granting these privileges to the Southern Bell Telephone and Telegraph Company, to take effect twelve months after its approval. And 10th September, 1895, the same city council passed another ordinance as to the joint use of poles erected in the streets and alleys of the city of

Richmond, for the support of wires used in connection with the transmission of electricity.

The first section of this ordinance provides that all poles now erected in the streets or alleys of the city of Richmond for electric wires, except such as support wires required by city ordinances to be removed and run in conduits, shall thereafter be allowed to remain only on terms and conditions thereinafter set forth.

The second section provides that no pole now erected for the support of telephone wires shall remain on any street in said city after 15th December, 1895, unless the owner or user of such pole shall first have petitioned for and obtained the privilege of erecting and maintaining poles for telephone purposes in accordance with the conditions of this ordinance and such others as council may see fit to impose. If such owner fail to obtain such privilege and fail or neglect to remove the poles and restore the street to its former condition, he shall be liable to a fine not more than $500, and not less than $100, for every pole so remaining. Each day's failure to be a separate offence. Then follows a number of sections imposing most stringent conditions, placing the whole matter within the control of the city and its officers; reserving the right in the city council at any time to put other restrictions and regulations as to the erection and use of such poles, and from time to time to require the removal of them and the wires to be run in conduits. On 10th September, 1895, another ordinance was passed requiring the removal of poles and wires from overhead in certain streets and for the construction and using conduits in certain streets. This ordinance was enforcible under heavy penalties, with the provision also that any company getting the privilege of putting in these conduits, must make them 100 per cent. larger than is needed for their use, so that the city might run its wires free in such conduits and any other company may use them for an agreed compensation, or one to be fixed by arbitrators.

Threats having been made to carry these ordinances into effect, the complainant filed its bill praying an injunction. It rests its right to use the streets and alleys of the city of Richmond for the purposes of its business under article I, section 8 of the Con-
105 stitution of the United States, and the act of Congress of 1866, and denies that in such use it can be prevented or controlled or be in any way dependent upon an ordinance or any ordinances of the city council.

The prayer for an injunction is in these words:

"That said city and all others, its agents and employees, may be restrained and enjoined from removing or interfering with its poles and wires in said city, and from interfering with the right of your orator to use said poles and wires, and that all proceedings by said city or its agents and all others to prevent your orator from continuing, renewing, repairing and extending its lines, wires and poles in, along and over the streets and alleys of the said city, and to inflict fines and penalties on your orator for so doing, may be restrained and enjoined; that the right of your orator to use said poles and wires and to carry on its said business along and over

the streets of the said city be declared and defined; that the ordinances of said city of the 14th of December, 1894, and of the 10th September, 1895, so far as they undertake to prevent your orator from maintaining and using its lines, poles and wires over and along the streets and alleys of the city of Richmond, from repairing, renewing and extending its said poles, wires, lines and routes as its business may require, may be declared null and void."

Upon the filing of the bill an interlocutory injunction was granted.

The bill was first met by demurrer. The demurrer sets up these defences:

1. As to the equity of the bill.
2. That the act of Congress of 1866, applies only to telegraph companies and not to companies like the complainant.
3. That the act of Congress, even if it does apply to complainant does not give it any right to erect its poles and wires along the streets of Richmond, without the consent of the city, subject to reasonable regulations as to the routes, position and number of the poles and to pay for use of the streets.
4. That if this is the effect of the act of Congress, it is unconstitutional.
5. That the ordinance of 1884, constitutes a binding contract between complainant and the city of Richmond, with a power
106 of re-cission by repeal in the city council. That this power was given by the statute of the State of Virginia and was properly exercised.

The demurrer was overruled and the defendant filed its answer. The portions of this answer which bear upon the conclusions reached in this case are these: A denial that the wires, poles and lines of the complainant in and over the streets and alleys of said city, constitute a part of the postal service of the United States. A denial that complainant is a telegraph company and a denial that its acceptance of the act of 1866, so far as the telephone exchange in Richmond is concerned, even entitled it to any of the rights and powers authorized by the act. A denial that the acceptance by the complainant of the provisions of the act of 1866, has rendered complainant independent of and superior to the council of the city of Richmond.

The cause came to a full hearing and the circuit court made the following decree:

"The court, without passing on the rights claimed by the complainant company under the laws of Virginia, and the ordinances of the city of Richmond, is of opinion and doth adjudge, order and decree that the complainant company has, in accordance with the terms and provisions and under the protection of the act of Congress of the United States, approved July 24th, 1866, (which is an authority paramount and superior to any State law or city ordinance in conflict therewith) the right 'to construct, maintain and operate its lines over and along' the streets and alleys of the city of Richmond, both those now occupied by the complainant company, and those not now so occupied, and to put up, renew, replace

and repair its lines, poles and wires over and along said streets and alleys, as well as to maintain, construct and operate the same and to connect its lines with new subscribers along said streets and alleys, and the said city of Richmond, its agents, officers and all others are enjoined and restrained from cutting, removing, or in any way injuring said lines, poles and wires of the complainant company, and from preventing or interfering with the exercise of the aforesaid rights by the complainant company, and also from taking proceedings to inflict and enforce fines and penalties on said company for exercising its said rights."

The defendant obtained leave to appeal from this decree, and it comes up on the assignments of error. These are eleven in
107 number. The first three are general in their character, going to the preliminary injunction and to the demurrer to the bill.

The fourth is to the effect that the ordinance of 1884, passed under the authority of the State of Virginia, and under which the operations of the complainant company were begun and continued, created a contract which bound the complainant to cease its operations upon the streets and alleys of Richmond whenever the city council exercised its right to repeal said ordinance, a right reserved in the ordinance itself.

The fifth and sixth deny that the complainant has any right to the privileges under the act of Congress of 1866, which applies to telegraph companies, and not to a telephone company as complainant is.

The seventh, eighth and ninth deny that even if complainant comes within the act of 1866, it can be protected, unless it is engaged in interstate commerce business; and only as to such business, and denies that it is protected in its local business. They also deny that there is anything in the contract with the Western Union Telegraph Company which puts complainant in interstate commerce business, or within the protection of section 8, article I, of the Constitution of the United States.

The tenth and eleventh assignments assign error as to the scope of the injunction, as it enjoins the city from interfering with the *infra* State and local business of the complainant, and a right to erect its poles and stretch its wires, without any control on the part of the city.

At the bar the appellant declared that the constitutionality of the act of Congress of 1866, was recognized and admitted.

That all streets which are letter-carrier routes are post-roads of the United States.

That under the act of 1866, a telegraph company can obtain a right of way for its poles and wires through a city and along its streets, against the wish of the municipality.

The decisive questions raised in this case are :

First. Does the complainant come within the protection, and is it entitled to the privileges contained in the act of Congress of 1866?

Second. If it comes within the provisions of that act, how far has

it limited and restricted itself by accepting the provisions of the ordinance of the city of Richmond?

Third. To what extent does the protection of the act of 1866 go? Does it make the company accepting it free of the control of the municipality in which it does business?

108 1.

The act of Congress of 1866, in terms, speaks of telegraph companies. Do these words include telephone companies?

The telegraph and telephone both communicate messages by means of electricity over wires, for longer or shorter distances. The telegraph communicates these messages by sound of instruments, the telephone by the human voice usually. Both depend upon electricity for their action. Each is but a form of use—the product and result of the same principle. The names are only used to distinguish the method of communication.

In England, in the case of *Attorney General vs. Edison Telephone Co.*, 6 Q. B. Div., 244, Stephens, J., in a carefully prepared and elaborate discussion, says: "I do not think it necessary to express any opinion on a controversy which is more scientific than legal, and perhaps more properly metaphysical or relative to the meaning of words than scientific, as it seems to turn upon the nature of identity in relation to sound. It is enough to say that, whatever be the merits of the controversy, it does not appear to us that the fact, if it is a fact, that sound itself is transmitted by the telephone, establishes any material distinction between telephonic and telegraphic communication, as the transmission, if it takes place, is performed by a wire acted on by electricity."

In the *Wisconsin Telephone Co. vs. City of Oshkosh*, 62 Wis., 32, this case was cited with full approval, and the doctrine asserted that, in contemplation of law, a telephone and telegraph company are one and the same. In the case of the *Chesapeake & Potomac Telegraph Co. vs. B. & O. Telegraph Co.*, 66 Maryland, 410, the court of last resort of that State quote with approval the English case above quoted, and say farther: "It is clear if we take the term telegraph to mean and include any apparatus or adjustment of instruments for transmitting messages or other communications by means of electric currents and signals, that term is comprehensive enough to embrace the telephone."

The same doctrine is clearly and fully expressed in *Duke vs. Central N. J. Telephone Co.*, 53 N. J. Law Reports, 341. The court quotes the language of Bell in his application for a patent, set out in the *Telephone Cases*, 126 U. S., 1. He says: "What I claim is the method or an apparatus for transmitting vocal or other sounds telegraphically as herein described, by causing electrical undulations similar in form to the vibrations of air accompanying said vocal sounds."

109 And so also Brown, J., now Mr. Justice Brown, in *Cumberland Telephone and Telegraph Co. vs. United Electric Railway Co.*, 42 Fed. Rep., 273, says: "We see no reason to doubt the posi-

tion assumed by the complainant that a telephone company is a telegraph company."

The complainant, therefore, comes within the protection, and is entitled to the privileges, of the act of 1866.

2.

The next question is, if the complainant is within the protection and enjoys the privileges of the act of Congress of 1866, how far has it limited and restricted itself by accepting the provisions of the ordinance of the city of Richmond.

In June 1884, the ordinance was passed granting the right of way throughout the city of Richmond to this complainant. At that time it had not accepted the provisions of the act of 1866, and in no other way could it get the right to enter the city but by permission of the city council. The permission was given subject to the right of the city council to revoke it at any time after twelve months, and on 14th December, 1894, it was revoked. In the meantime, 1889, the complainant, recognizing the uncertainty of its tenure, concluded to put the enjoyment of its rights on higher grounds, and unner paramount authority. Can it now be said that the complainant cannot avail itself of the privileges of the act of 1866, and must look for them to the city council, because formerly the city granted privileges which it has revoked? Can a contract, revocable and revoked by one party, still bind the other party after its revocation?

The complainant is not now using the post-roads of the city of Richmond under any grant from the city council. The council themselves, by their own act, have put an end to any such contract with the complainant. But for the act of Congress, it would be a trespasser on these post-roads. Under the act of Congress, it has the right to construct, maintain and operate lines of telegraph over and along any of the post-roads of the United States, and when an effort is made, or threatened, to deal with it as a trespasser, it can refer to that act.

3.

The next question is: To what extent does the protection of the act of Congress go? Does it free the company accepting its provisions from any control of the mun-cipality through whose streets it may go?

110 This act of 1866 authorizes the company accepting its provisions to maintain and operate its lines on any post-road. The act itself prescribes a condition. The lines of telegraph must not interfere with the ordinary travel. It is, therefore, subordinate to the public use. The privileges of this act, "like any other franchise, are to be exercised in subordination to public as to private rights." (*St. Louis vs. Western Union Telegraph Co.*, 148 U. S., 100.) These privileges must be enjoyed, subject to the lawful exercise of the police power. In *Western Union Telegraph Company vs. Massachusetts*, 125 U. S., 530, a telegraph company, protected by the act of 1866, and engaged in business as a common carrier, was held to

be a subject of taxation by a State. The Supreme Court uses this language: "It never could have been intended by the Congress of the United States, in conferring upon a corporation of one State the authority to enter the territory of any other State and erect poles and lines therein, to establish the proposition that such a company owed no obedience to the laws of the State into which it thus entered."

In the case of *St. Louis vs. Western Union Telegraph Company, supra*, a charge by a city for poles was held valid against this same company, the only limitation being that the charge be not unreasonable. In *Western Union Telegraph Company vs. The Mayor*, 3 Law Reports Ann., 449, an ordinance requiring that telegraph wires be placed in conduits was sustained. Streets and alleys in a city are the public property placed under the supervision and control of the mun-cipality, the representative of the sovereign power. They exercise this supervisions and control for the benefit of the whole public, those living upon and those passing through such streets and alleys. And in the exercise of this supervision, which is the police power, they must see to it that the rights of the public and of private persons are not infringed.

The complainant, under the act of Congress, has the right to use these highways. Neither the State nor any mun-cipality can prevent it. But this use must be subordinate to the rights of the public, must not endanger those rights. And as the municipality is the guardian of the public in this regard, it can establish such lawful provisions as may regulate the use, always, however, avoiding such regulations as will make the use burdensome and intolerable, and so practically impossible. (*City of Philadelphia vs. Western Union Telegraph Company*, 82 Fed. Rep., 797.)

This being so, the injunction granted by the circuit court is
111 too broad in its language and effect. There should have been the recognition of a proper exercise of the police power by the municipal corporation, and the use by the complainant of its poles and lines should have been declared to be subject to such regulations and restrictions as may now or may be hereafter imposed by the city council of Richmond, in the proper and lawful exercise of the police power.

The only remaining question is, do the ordinances of city of Richmond prescribe regulations which will make the use burdensome and intolerable, and practically impossible?

"It belongs to the legislature to exercise the police power of the State, subject to the power of the courts to adjudge whether any particular law is an invasion to rights secured by the Constitution." (*Mugler vs. Kansas*, 123 U. S., 623) "The legislature may not, under the guise of protecting the public interests, arbitrarily interfere with private business of or impose unusual and unnecessary restrictions upon lawful occupations. In other words its determination as to what is a proper exercise of its police power is not final or conclusive, but is subject to the supervision of the courts." (*Lawton vs. Steele*, 152 U. S., 137.) If this be the case with regard to the

legislature, *a fortiori* it applies to a municipal corporation, the creature of the legislature.

On examination of these ordinances it will be seen that as a condition precedent to the use of the streets of Richmond, a petition must first be filed for the purpose of erecting and maintaining poles and wires for telephone purposes in accordance with the conditions of that ordinance, and such other conditions as the council may see fit to impose. (Ordinance approved 10th September, 1895.) The 7th section of this ordinance expressly reserves to the city council the right to put at any time other restrictions and regulations. And the whole tenor and effect of the ordinance is to put the company absolutely under the control of the city. And the terms of the ordinance are enforcible under heavy penalties. The next ordinance, the one providing for wires in conduits, after providing that the city council may compel the removal of wires from poles overhead in certain streets and the putting them in conduits in certain streets, under a penalty of not less than $100 or more than $500 for each pole per week, provision is made for permission to build conduits of sufficient capacity to accom-odate the wires in such streets and to provide for an increase thereof to at least the extent of 100 per cent., the increase of space not to
112 be occupied by the party building the conduits without the consent of the council, the conduit to be used for the wires of the council free, and the city council to allow any other person or corporation to use such conduits for wires upon paying compensation in the mode prescribed by the city council. This privilege of building and owning conduits to last no longer than fifteen years, at the end of which time the city may put such other restrictions, conditions and charges as it may see fit, or may order their removal at the expense of the owner. The charge for using or owning any wire in any such conduit shall be for each year until January 1, 1900, $2.00 per wire per mile. After January 1, 1900, such larger compensation for the rest of the term as the city council may see fit. These are some of the conditions now imposed, with the right to impose any others which council may see fit. Now it goes without saying that if the complainant, notwithstanding its claim of protection under the act of Congress of 1866, were willing to file a petition to the city council for the privilege of using its streets and alleys, and in that petition agreed, in consideration of its grant, to abide by any present or future condition, regulation or restriction the council may impose, this would be a binding contract and would control the complainant. *R. R. Co. vs. Ryan*, 153 U. S., 436. Whatever the rights of the complainant may have been under such a stipulation, it would surrender them and come within the absolute domination of the city council. The courts could not review any ordinance to discover if it be within the lawful exercise of the police power, for the complainant would be bound by its contract to obey the ordinance, be it a police regulation or not.

These conditions, regulations and restrictions already prescribed by the city council appear to be stimulated by a desire to oppress

and control, perhaps defeat, the existence of the complainant and so are not the lawful exercise of the police power.

Let the case be remanded to the circuit court with instructions to modify the terms of the injunction therein granted, so that it may conform to the principles declared in this opinion, the costs of the case to be equally divided between the parties.

BRAWLEY, *District Judge*:

I concur in the result, but am not inclined to assent to so much of the opinion as holds that a telephone company, such as is
113 described in this case, and whose business is local in character, is within the purview of the act of Congress of July 14, 1866, relating to telegraph companies.

At the same term, to wit: February 5, 1898, the court here made and entered the following decree, to wit:

Decree.

United States Circuit Court of Appeals, Fourth Circuit.

CITY OF RICHMOND, Appellant, *vs.* SOUTHERN BELL TELEPHONE AND Telegraph Company, Appellee.	No. 241. Appeal from the Circuit Court of the United States for the Eastern District of Virginia.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the eastern district of Virginia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the motion made by the appellee at the last term of this court (before the case was heard) to dismiss this appeal and case, because said appeal should have been taken to the Supreme Court of the United States, and not to this court, be, and the same is hereby overruled; and that the decree of the said circuit court, in this cause, be, and the same is hereby, reversed and this cause is remanded to the circuit court of the United States for the eastern district of Virginia, at Richmond, with instructions to modify the terms of the injunction therein granted so that it may conform to the principles declared in the opinion of this court.

It is further ordered that each side pay their own costs incurred in this court.

It is further ordered that the mandate of this court issue after the expiration of twenty days from the date hereof.

CHARLES H. SIMONTON,
Circuit Judge.

February 5, 1898.

114 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *ss:*

I, Henry T. Meloney, clerk of the United States circuit court of appeals for the fourth circuit, do certify that the aforegoing is a true

copy of the entire record in the therein-entitled cause as the same remains upon the records and files of the said circuit court of appeals.

Seal United States Circuit Court of Appeals, Fourth Circuit.

In testimony whereof I hereunto set my hand and affix the seal of the United States circuit court of appeals for the fourth circuit, at Richmond, this 27 day of April, A. D. 1898.

HENRY T. MELONEY,
Clerk U. S. Cir. Ct. Appeals, Fourth Circuit.

115 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fourth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The City of Richmond is appellant and The Southern Bell Telephone and Telegraph Company is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the eastern district of Virginia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the
116 Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th day of April, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

117 [Endorsed:] No. 16827. Supreme Court of the United States. No. 264, October term, 1898. The City of Richmond *vs.* The Southern Bell Telephone & Telegraph Co. Writ of certiorari and return. The execution of the within writ of certiorari appears from the certified transcript of the record mentioned in the therein-entitled cause, which is annexed hereto. Henry T. Meloney, cl'k U. S. circuit court of appeals, fourth circuit. April 27, 1898. Filed April 29, 1898.